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IN THE SUPREME COURT OF THE STATE OF IDAHO

THE STATE OF IDAHO,)	Supreme Court No. _____
)	
Plaintiff-Respondent,)	
)	
vs)	COURT REPORTER'S TRANSCRIPT
)	
THOMAS EUGENE CREECH,)	
)	
Defendant-Appellant.)	

BEFORE
HONORABLE J. RAY DURTSCHI
DISTRICT JUDGE

APPEAL from the District Court of the First
Judicial District of the State of Idaho, in and for the
County of Shoshone.

A P P E A R A N C E S

WAYNE KIDWELL, Esq. Attorney General of the State of Idaho, Capitol Building, Boise, Idaho, for and on behalf of the plaintiff-respondent.

BRUCE O. ROBINSON, Esq., Post Office Box 8, Nampa, Idaho, appearing for and on behalf of the defendant-appellant.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

THE STATE OF IDAHO,

Plaintiff,

VS

THOMAS EUGENE CREECH,

Defendant.

Cr. No. 2165

REPORTER'S TRANSCRIPT

BEFORE

HONORABLE J. RAY DURTSCHI

DISTRICT JUDGE

BE IT REMEMBERED, That the above-entitled matter came on for hearing and trial before the Honorable J. Ray Durtschi, District Judge, with a jury, at Cascade, Idaho, May 20, 1975 through May 22, 1975, and at Wallace, Idaho, October 6, 1975 through October 22, 1975.

A P P E A R A N C E S

ROBERT REMAKLUS, Esq., Prosecuting Attorney, Cascade, Idaho, and
LYNN THOMAS, Esq., Deputy Attorney General, Statehouse, Boise,
Idaho, appearing for and on behalf of the plaintiff.

BRUCE O. ROBINSON, Esq., Post Office Box 8, Nampa, Idaho,
appearing for and on behalf of the defendant, and

WARD HOWER, Esq., Post Office Box 799, Cascade, Idaho,
appearing for and on behalf of the defendant.

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

THE STATE OF IDAHO,)	Cr. No. 2165
)	
Plaintiff-Respondent,)	
)	LODGMET OF COURT
vs)	REPORTER'S TRANSCRIPT
)	ON APPEAL
THOMAS EUGENE CREECH,)	
)	
Defendant-Appellant.)	

RECEIVED from John W. Gambee, Official Court Reporter
of the above-entitled court, and lodged with me this ____ day
of _____, 1976, original plus _____ copies of
the Court Reporter's Transcript on Appeal.

CLERK OF THE DISTRICT COURT

Deputy

1 WALLACE, IDAHO, WEDNESDAY, OCTOBER 8, 1975, 9:30 A.M.

2
3
4 THE COURT: Counsel ready to proceed?

5 MR. ROBINSON: Yes, Your Honor.

6 MR. REMAKLUS: Yes, Your Honor.

7 THE COURT: For the record I wanted to state that we
8 just had a report that one of the jurors who has been excused,
9 or challenged already on pre-emptory challenges,
10 Wanda J. Kurt, has had a serious illness arise in the family
11 and may be a terminal illness so I wonder if Counsel have any
12 objection to having her excused prior to exhausting pre-emptory
13 challenges?

14 MR. ROBINSON: Defense has no objection.

15 MR. REMAKLUS: No, Your Honor.

16 THE COURT: All right. Would you just give that word
17 to Mrs. Kurt and she may be excused. If you -- you don't need
18 to do that now. I want to take a couple other matters up.

19 Also have a medical excuse for Juror No. 94,
20 Donna Rude. Any objection to her being excused?

21 MR. ROBINSON: No objection.

22 MR. REMAKLUS: No, Your Honor.

23 THE COURT: All right, number 94, Donna Rude, will be
24 excused, then.

25 Also number 115, Forest Vandorn, has a funeral in

1 the family. Any objection to Mr. Vandorn being excused?

2 MR. REMAKLUS: No.

3 MR. ROBINSON: No objection, Your Honor.

4 THE COURT: All right.

5 My records show that we're presently trying to seat
6 someone in Seat No. 1 to replace Mrs. Gregory who has been
7 challenged on pre-emptory challenges.

8 I'll direct the Clerk to draw another number at
9 this time.

10 All right. Number 98, Ester Scupholm.

11 Following our procedure I'll have the Clerk draw
12 one more unidentified juror to stand by.

13 It will take a few minutes to get those two
14 jurors over here, so we'll be in recess a few minutes.

15 (Recess taken.)

16 THE COURT: Counsel ready to proceed?

17 MR. ROBINSON: Yes, Your Honor.

18 MR. REMAKLUS: Yes, Your Honor.

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ESTER V. SCUPHOLM,
a prospective juror herein, having been first duly sworn, took
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Mrs. Scupholm, I want to just ask you a few
questions and then the attorneys will want to ask you some.
Everything we say here has to be reported so if you will please
speak audibly and loudly enough so we can hear you and not just
nod your head.

A. Yes, sir.

Q. I want to visit with you a few minutes first about
the procedure we'll follow with the jury once the jury starts
as far as taking evidence and see if you have any particular
problems with living with that procedure.

After the jury is completely selected and sworn
to try the cause and we start taking evidence the jury will be
what we call sequestered; which means that they won't be able
to go home at recesses or in the evening. You will be housed
in a motel that we've made arrangements at, the Stardust, the
meals will be taken at restaurants under the direction of the
Bailiffs and this will last for the duration of the trial.

A. Yes, sir.

Q. Now, we don't know at this point exactly how long

1 the trial will last, our estimate is about three weeks and that
2 is, probably, a reasonable estimate.

3 We are wondering if there's anything in your
4 personal life, your home or your work that you are involved in
5 that would make this impossible for you to do, or create an
6 extreme hardship. We recognize, of course, it will be
7 inconvenient for all of the jurors so we don't phrase it in
8 terms of just inconvenience but whether there's a very serious
9 problem in your personal situation.

10 A. Yes, there is.

11 Q. Could you tell us what it is?

12 A. Well, my husband, who was just killed three months
13 ago --

14 Q. I see.

15 A. -- and I'm very much in my depressive mood.

16 Q. Do you have a family?

17 A. I have a daughter and a son living in Coeur d'Alene.

18 Q. You are alone?

19 A. Yes, I'm all alone.

20 Q. You feel this --

21 A. I really do. I think it would be too much of an
22 emotional --

23 Q. The strain would be depressing to you as far as
24 listening to the evidence?

25 A. Yes, definitely.

1 MR. ROBINSON: Stipulate.

2 MR. REMAKLUS: Yes, I stipulate Mrs. Scupholm may be
3 excused.

4 THE COURT: All right, we'll excuse you, then. Thank
5 you for the time you've spent here.

6 THE WITNESS: Yes.

7 THE COURT: All right, the next juror is
8 William McArthur, number 74.

9 I'll have the Clerk draw a stand-by name.
10

11 WILLIAM L. MCARTHUR,
12 a prospective juror herein, having been first duly sworn, took
13 the stand and testified as follows:
14

15 VOIR DIRE EXAMINATION

16 BY THE COURT:

17 Q Mr. McArthur, I want to just ask you a few
18 questions and then I think each of the attorneys will want to
19 ask you a few. Everything we do here the Court Reporter sitting
20 here has to take that down, so if you will answer audibly and
21 not just nod and answer loudly enough for him to hear you
22 please.

23 Like to visit with you just a minute about the
24 procedure we'll follow with the jurors once the trial gets
25 under way as far as taking evidence. When the jury is

1 completely selected and sworn to try the cause and we start
2 receiving evidence we do what we call sequester the jury; which
3 means the jurors won't be able to go home during recesses or
4 in the evening. The jurors will be housed at a motel and take
5 their meals in restaurants under the supervision of the Bailiffs
6 and this will last for the duration of the trial.

7 Now, we don't know -- any of us right now exactly
8 knows how long the trial will last. Our estimate is about
9 three weeks, which is, probably, a reasonable estimate.

10 We're wondering whether there's anything in your
11 personal life, your home situation, work situation, that would
12 make this impossible for you to do, or create an extreme
13 hardship for you. We know it will be inconvenient, it's going
14 to be inconvenient for all the jurors, so I don't ask in terms
15 of inconvenience, but whether there -- it is a real serious
16 situation, inconvenience in your case?

17 A Yes, sir. I have a school I've been attending
18 for the Forest Service, it's continuing educational courses,
19 there's three sessions. Two of those sessions have already
20 been held and the final session is to be held starting the
21 26th of October; which is the final session of a three-part
22 course and this is part of a school which has to be taken in
23 sequence.

24 Q What would happen to you if you missed that third
25 course?

1 A. It would throw it out completely for one year and
2 I am working on a certification to write civil cultural
3 prescriptions; which is part of my job and I have to attend this
4 school to be qualified to write the prescriptions.

5 Q. And this would deprive you of that opportunity for
6 one year?

7 A. Possibly one year. Each session of the school is
8 different than the session before, the session thereafter. So,
9 therefore, it's --

10 Q. And if you miss this one you'd have to take the
11 first two over again?

12 A. It could very well, possibly have to take the
13 first two over again. The course started a year ago and it's
14 been held at two universities already and this will be the
15 third one.

16 Q. What university do you go to?

17 A. First university was at Montana, the second one
18 was at Washington State and the final one will be at the
19 University of Idaho. If you have any questions on it, you can
20 call my supervisor in St. Maries.

21 THE COURT: We'll take your word for it.

22 MR. ROBINSON: I'd stipulate, Your Honor.

23 MR. REMAKLUS: Yes, Your Honor, we're agreeable to
24 excusing him.

25 THE COURT: All right, Mr. McArthur, we appreciate the

1 time you have spent here and we will excuse you and ask you not
2 to discuss the questioning here with any of the other panel
3 members if you happen to run into them.

4 THE WITNESS: Okay. Thank you.

5 THE COURT: The next juror is number 29,
6 Ester Everett.

7 I'll have the Clerk draw another stand-by name.
8

9 ESTER J. EVERETT,
10 a prospective juror herein, having been first duly sworn, took
11 the stand and testified as follows:
12

13 VOIR DIRE EXAMINATION

14 BY THE COURT:

15 Q. Mrs. Everett, I just want to ask you a few
16 questions and then the attorneys will ask a few. Everything we
17 say has to be taken down by the Court Reporter so if you will
18 speak loudly enough for him to hear you, don't just nod, answer
19 audibly at different questions.

20 I want to visit with you for just a minute about
21 the procedure we're going to follow with the jurors after the
22 trial -- we start taking evidence in the trial; see if you have
23 any particular problem with that.

24 Once we reach that state we'll do what we call
25 sequester the jury; which means the jurors will not be able to

1 go home during recesses or even in the evening recess. We will
2 house the jurors at a motel, made arrangements at the
3 Stardust, the meals will be taken at restaurants under the
4 supervision of the Bailiffs and this will continue during the
5 duration of the trial.

6 We don't know for sure, any of us at this point,
7 how long the trial will last. We estimate three weeks, probably,
8 is a reasonable estimate.

9 We are wondering, understanding this procedure,
10 if there's anything in your personal life, your home
11 situation and work situation you might be involved in that
12 would make this impossible for you to do, or create an extreme
13 hardship. We recognize it will be inconvenient for all the
14 jurors, so we don't talk in terms of convenience, but in terms
15 of severe hardship. You feel you can live with this
16 situation?

17 A. Right.

18 Q. We'll get on with another matter, then.

19 Under our system of justice and philosophy in
20 criminal law, Mrs. Everett, a defendant in a criminal action
21 is presumed to be innocent until his guilt is established beyond
22 a reasonable doubt by the State. Later on when I give the
23 jurors instructions I'll explain these terms in more detail
24 and give you more detailed instructions on these principles.
25 But, for present purposes, the effect of this is that the

1 defendant doesn't have to do anything to prove his innocence.
2 He doesn't have to have any burden as far as proving his
3 innocence. The entire burden is on the State to prove him
4 guilty beyond a reasonable doubt.

5 The effect this has right at this stage of the
6 proceeding before any evidence has been presented is to cloak
7 the defendant, Mr. Creech, with the presumption of innocence.
8 Obviously, when the evidence is presented and the case has been
9 fully submitted to the jury then the jurors will have to weigh
10 the evidence and make a decision on guilt or innocence. But,
11 right now before anything has been done Mr. Creech must be
12 considered innocent under this principle of law.

13 Is there anything you are aware of that would
14 prevent you from giving the defendant the full benefit of this
15 principle at this time?

16 A. No.

17 Q. Have you read or heard anything about this case?
18 In the newspapers, on radio or TV or from any other source,
19 gossip or visiting with people?

20 A. No.

21 Q. You don't know any purported facts?

22 A. Just what you said over there on Monday.

23 Q. Except what we said in court, that's the only
24 thing you've heard about the case so you haven't heard or read
25 any purported facts about the case or about Mr. Creech?

1 A. Yes, right, I do.
2 Q. The legislature --
3 A. Right.
4 Q. -- will have to take the responsibility for that
5 if anyone does.
6 A. Right.
7 Q. The only thing we can determine here is whether
8 your feeling is so strong against the death penalty that it
9 would just absolutely prevent you from considering the evidence
10 on First Degree Murder and rendering possible verdict.
11 A. No.
12 Q. You feel you could weigh the evidence and consider
13 it?
14 A. Um-hmm.
15 Q. Well, it will be the function of the jury, as I've
16 already intimated, Mrs. Everett, to determine the facts in the
17 case, to judge the credibility of witnesses and weight to be
18 given to their testimony. The function of the Judge is to give
19 the jurors the law and explain the law to the jurors. I think
20 sometimes the law is different than the jurors expected it to
21 be; sometimes perhaps they disagree with the law as it was
22 stated by the Court. However, it is their duty to follow the
23 law under their oath as jurors.
24 Is there anything that would prevent you from
25 following the law as I would give it to you in instructions?

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A. No.

Q. Do you know of anything that I perhaps haven't touched on or asked you about that would prevent you from being a fair and impartial juror to both sides here?

A. No.

THE COURT: Thank you. I think the attorneys would like to question you now.

MR. REMAKLUS: Thank you, Judge.

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q. Mrs. Everett, you have three children and they are all grown and moved away from home; is that correct?

A. Um-hmm.

Q. Where do they live?

A. In Spokane and over in Montana.

Q. What do you have? Boys or girls, or both?

A. I have a boy and two girls.

Q. And what does your son do?

A. Works for the Post Office.

Q. And are your daughters employed?

A. No.

Q. What do their husbands do?

A. One is a logger and the other one works at Kaiser until -- he's been let off now for several months from strikes.

1 Q. Um-hmm. Do you feel that the fact that the death
2 penalty would be inflicted in this case in the event that you
3 vote for guilt, do you think that the presence of the death
4 penalty would influence your decision as to guilt or innocence?
5 A. No.
6 Q. It's a difficult concept to separate.
7 A. Right, I know it.
8 Q. But, you are satisfied in your own mind that you
9 could examine the evidence and decide the fact of guilt or
10 innocence based upon your evaluation of the evidence?
11 A. Yes.
12 Q. I'm sure that if you are accepted as a juror the
13 Judge will give long and complete instructions as to burden of
14 proof and reasonable doubt and if you are selected would you
15 pay particular attention to the instructions?
16 A. Yes.
17 Q. You've lived here in the county about all your
18 life; haven't you, Mrs. Everett?
19 A. Yes.
20 Q. Do you have a religious preference?
21 A. I'm just Congregationalist.
22 Q. Are you active in the church?
23 A. Oh, not too strong, but --
24 Q. Do you and Mr. Everett have any hobbies?
25 A. We're separated.

1 Q Do you have any hobbies, or activities that you
2 enjoy?
3 A Um-hmm.
4 Q What do you do in your leisure time?
5 A I play bridge and knit and crochet and ski and
6 swim and --
7 Q Do you take any of the daily papers?
8 A I have a daily paper.
9 Q Um-hmm. Do you take magazines in the mail?
10 A I take them, Reader's Digest.
11 Q Um-hmm. Do you watch television?
12 A Oh, not too much, nothing much on.
13 Q You haven't watched any of these programs like
14 Petrocelli, have any preconceived idea how lawsuits should be --
15 A I've seen them, yes.
16 Q There's nothing about those programs that would
17 lead you to believe how a lawsuit should be tried, or court
18 conducted, is there?
19 A No.
20 Q It may not be as exciting here as it is on
21 television, I'm sure you understand that?
22 A Right.
23 Q I assume that you are not acquainted with
24 Mr. Robinson, the defense attorney, or any of us?
25 A No.

1 Q You have never been involved in a lawsuit; have
2 you?

3 A No.

4 Q Have any of your family or close friends been
5 involved in any kind of litigation?

6 A No.

7 MR. REMAKLUS: Pass the juror for cause, Your Honor.

8 MR. ROBINSON: If I may, Your Honor?

9 THE COURT: Yes.

10
11 VOIR DIRE EXAMINATION

12 BY MR. ROBINSON:

13 Q Mrs. Everett, I notice on your questionnaire that
14 your husband's occupation is that of a Deputy Sheriff here in
15 Shoshone County; does his work with the Driver's License
16 Bureau?

17 A Um-hmm.

18 Q And even though there's a separation as you said,
19 was there anything here in the last couple of months, discussion
20 between you and your husband regarding Thomas Eugene Creech
21 being here in Shoshone County?

22 A We've been separated since the first of July.

23 Q So, no information has come to you from this source?

24 A No.

25 Q And I believe that your comment to Judge Durtschi

1 was that the first you knew anything about this case was from
2 what he told all of the jurors on Monday morning; is that
3 correct?

4 A. Right.

5 Q. Now, in your affiliation with the church, do you
6 yourself believe in God?

7 A. Yes.

8 Q. Do you believe that Satan exists?

9 A. Not really.

10 Q. And in your social life, your work, grocery store;
11 isn't it?

12 A. Um-hmm.

13 Q. You are still employed at the grocery store?

14 A. Um-hmm.

15 Q. Have you been involved in, or overheard,
16 conversations of witchcraft being performed here in Shoshone
17 County, Silver Valley area?

18 A. No.

19 Q. Nothing of this nature has come to your attention?

20 A. (No audible response.)

21 Q. Mrs. Everett, probably will come to pass in the
22 production of evidence and testimony that there will be some
23 crude, vulgar, profane terminology that's used in documents
24 and in testimony. Will this in itself have an appalling effect
25 on you and create some sort of a prejudice against the

1 defendant; the mere fact that we do have this kind of language
2 that's used?

3 A. No.

4 Q. I --

5 A. I don't think so.

6 Q. And it may also be that there will be some color,
7 very gruesome photographs of the deceased victims. Now, would
8 the impact of seeing those in your mind, per se, have any
9 prejudicial effect?

10 A. That's possible.

11 Q. Well, now, in examining those, would it have a
12 prejudicial effect to the extent that the -- because you were
13 appalled at them you would immediately apply that to the
14 defendant?

15 A. It depends on what's gone on so far.

16 Q. Beg your pardon?

17 A. Depends on what's gone on so far.

18 Q. You'd look at all the other evidence to make your
19 determination?

20 A. Right.

21 Q. And not let just the shocking parts of the
22 evidence influence you?

23 A. I'd have to see and hear the whole case.

24 Q. I think that's fairly stated.

25 Mrs. Everett, you know yourself better than anyone

1 else in this whole courtroom know you, and in examining your
2 personality and your mental make-up, is there anything that
3 you know about yourself that you feel would be a disqualification
4 to serve as a juror in this case?

5 A. No.

6 Q. You can be fair and unbiased and non-prejudiced?

7 A. I believe so.

8 Q. And provide a fair trial?

9 A. I believe so.

10 MR. ROBINSON: Pass Mrs. Everett for cause,
11 Your Honor.

12 THE COURT: Mrs. Everett, we will, then, ask you to
13 step back in the jury room and wait and please don't discuss
14 the questioning here with the other jurors, or jury members
15 when they come in. Thank you.

16 MR. ROBINSON: Your Honor, may I inquire? I don't know
17 whether the Court made some comment about the pre-emptory used
18 on Mrs. Kurt and whether the -- whether or not that is a
19 counted pre-emptory or not.

20 THE COURT: Yes, it's counted.

21 MR. ROBINSON: All right, just needed some clarification,
22 Your Honor.

23 Is it the defense's fourth?

24 THE COURT: Fourth pre-emptory.

25 The stand-by juror is number five,

1 Peny L. Benson.

2 I'll have the Clerk draw another stand-by juror.

3
4 PENY L. BENSON,
5 a prospective juror herein, having been first duly sworn, took
6 the stand and testified as follows:

7
8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q Mrs. Benson, I'm going to ask you a few questions
11 first and then the attorneys will want to ask you some
12 questions. Everything we do here has to be reported by the
13 Court Reporter sitting here (indicating) so if you will speak
14 up loudly enough for him to hear you and not answer with nods
15 because he can't report those.

16 A Okay.

17 Q I want to visit with you for just a minute about
18 the procedure we're going to use with the jurors once we start
19 taking evidence in the trial and the jury is completely selected.
20 When we reach that point we'll do what we call sequester the
21 jury; which means that the jurors won't be able to leave or
22 go home during recesses or evening recesses. The jurors will
23 be housed in a motel and arrangements for that at the Stardust
24 have been made, the meals will be taken at restaurants under
25 supervision of the Bailiffs. This will continue during the

1 duration of the trial.

2 We don't know, any of us, how long the trial will
3 take for sure, but our estimate is about three weeks and that's
4 probably a reasonable estimate.

5 We're wondering, bearing this procedure in mind,
6 whether there's anything in your personal life, your family
7 situation, in your work situation involved in that, that would
8 make this impossible, or create an extreme hardship for you.
9 We recognize that at the outset it would be inconvenient for
10 all the jurors so we don't ask in terms of convenience but just
11 in terms of real serious problems that would be -- apply in your
12 case. Do you feel there would be any serious problems created
13 for you?

14 A. No, just inconvenience, as you say.

15 Q. But, you could live with the situation if you had
16 to --

17 A. Yes.

18 Q. -- handle it? All right. Fine.

19 I want to turn to another subject, then. Under
20 our system of justice and philosophy of criminal law, a defendant
21 in a criminal action is presumed to be innocent until his guilt
22 is established beyond a reasonable doubt by the State. In other
23 words, this places the burden on the State to prove the guilt
24 of a defendant beyond a reasonable doubt. Those terms will be
25 explained in my instructions later on in the trial in more

1 detail, but for the present purposes what it means is that a
2 defendant doesn't have to do anything to prove his innocence.
3 The burden is on the opposite, the burden of the State is to
4 prove him guilty.

5 The practical effect of this right at this stage
6 of the proceeding is that he has to be considered innocent.
7 The defendant does, of course, when evidence is presented and
8 the case is finally concluded and fully submitted to the jury
9 then the jurors will have to weigh the evidence and make the
10 decision on the verdict of guilt or innocence. But, speaking
11 to this point in the trial right now where no evidence has
12 been presented I say the law requires that Mr. Creech, the
13 defendant, be considered innocent.

14 Now, are you able at this time to give him the
15 full benefit of this principle and consider him innocent as he
16 sits here today right now?

17 A. No.

18 Q. You aren't?

19 A. No.

20 Q. Let me just pursue that a little. Let me ask you
21 first, do you have any quarrel, just generally, with this
22 principle of law of presuming a defendant innocent without
23 reference to this particular case, just the general approach
24 and philosophy? Do you have any quarrel with that principle
25 presumes a defendant innocent at the beginning of the trial?

1 A. Well, I think it depends on the case. If someone
2 has admitted that they are guilty, then they are guilty.

3 Q. Well, you see --

4 A. You wouldn't presume him innocent.

5 Q. But, you see, the things that perhaps lead you to
6 say that in a particular case at this stage of the proceeding
7 isn't -- hasn't really been established, you see, that might,
8 may be false information or incorrect information as I explained
9 to you when I gave you that instruction over in court the other
10 day.

11 Our whole philosophy is that the defendant can't
12 be convicted on things that are presented outside of court.
13 They have to be judged on evidence that's ruled admissible by
14 a Judge and presented in a court of law to a jury and the
15 decision has to be made on that evidence and not on something
16 that has been said outside of court or published outside of
17 court. You understand the philosophy we have?

18 A. Yes, but I can't help how I feel.

19 Q. No, I'm not quarreling with how you feel, but I --
20 move on, I want to develop why you feel that way, but I'm
21 trying to find out now whether you even object to this whole
22 approach we take under our law that of the criminal justice
23 system?

24 A. I guess not, no.

25 Q. Then, you don't quarrel with presuming a defendant

1 innocent at the beginning of a trial?

2 A. Right.

3 Q. And judging him by evidence, competent evidence
4 admitted in open court?

5 A. Right.

6 Q. Apparently, though, you have had something happen
7 that -- in connection with this particular case that makes you
8 believe you can't apply that particular principle in this
9 specific case; is that what you are telling me?

10 A. Yes.

11 Q. All right, now, let me just ask you this question:
12 Have you read or heard anything about this case in newspapers
13 or radio or TV that's given you this impression that you have?

14 A. Yes.

15 Q. Can you tell us what it is that you've heard or
16 read about the case?

17 A. I've read the newspapers, naturally the stories
18 before I was subpoenaed.

19 Q. What we'd like to find out is just test your
20 memory what you actually remember what purported facts you have
21 read about the case, or of Mr. Creech, that's led you to have
22 that frame of mind.

23 A. This I didn't read. This was from a source in
24 town that heard -- her daughter works in Boise and he admitted
25 that he had murdered and that he was -- he had done these

1 things.

2 Q I see. So, this came to your daughter and from
3 your daughter to you?

4 A No, it came to my mother and from my mother to me.

5 Q To your mother and from your mother to you?

6 A Yes.

7 Q And it originated from someone who was in Boise
8 that purported to know the facts about this, is that right?

9 A Right.

10 Q Do you feel that it would be impossible for you to
11 lay this information aside and judge this case solely on
12 evidence as presented here in open court?

13 A Yes, I do.

14 Q You feel you have such a fixed belief that it would
15 -- you just couldn't set it aside?

16 A No.

17 MR. ROBINSON: We would challenge, Your Honor.

18 THE COURT: Any objection?

19 MR. REMAKLUS: We don't object, Your Honor.

20 THE COURT: All right, we appreciate your frankness,
21 Mrs. Benson. We will excuse you, then, and appreciate your
22 time you spent.

23 You will be subject to call on other cases by the
24 Jury Commissioner. We don't have a specific date for you to
25 appear, but the Jury Commissioner may call you to come and serve

1 on other cases.

2 THE WITNESS: Okay.

3 THE COURT: Thank you.

4 All right, the stand-by juror is 123, Robert Yost.

5 I'll have the Clerk draw another stand-by juror.

6

7 ROBERT W. YOST,

8 a prospective juror herein, having been first duly sworn, took
9 the stand and testified as follows:

10

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q Mr. Yost, I want to ask you a few questions first
14 and then each of the lawyers will want to examine you.
15 Everything we state has to be reported by the Court Reporter
16 sitting here (indicating) if you will speak loudly enough so
17 he can hear you and report what you say.

18 A Okay.

19 Q I want to visit with you for just a minute about
20 the procedure we're going to use with the jury once we completely
21 select the jury and get started with taking evidence in the trial.
22 At that point we'll do what we call sequester the jury; which
23 means the jurors won't be able to go home during the recesses
24 or in the evening but we'd house them in a motel. We have made
25 arrangements at the Stardust to do this, take the meals at

1 restaurants under the supervision of the Bailiffs and this will
2 continue for the duration of the trial.

3 None of us know right now how long the trial will
4 take, we estimate, maybe three weeks, that's, probably, a
5 reasonable estimate.

6 Bearing in mind this procedure, we're wondering
7 if there's anything in your personal life, your home situation,
8 your work situation, that makes it impossible for you to do
9 this, or create an extreme hardship.

10 Now, we now know, at the outset, it's going to be
11 inconvenient so we don't talk in terms of convenience, but in
12 terms of whether there's anything in your particular situation
13 that would just make this impossible to do.

14 A My employers don't pick up any of my wages that
15 I do lose --

16 Q I see.

17 A -- would be the only thing.

18 Q For whom do you work?

19 A ASARCO at the Galena Mine. Then I teach school
20 part time too.

21 Q Will you -- I take it they can arrange a substitute
22 teacher or are you a standard --

23 A I'm just a part-time teacher.

24 Q You are a part-time teacher?

25 A And I don't get paid for that either because I'm

1 not salaried.

2 Q Well, this, depending upon the particular
3 arrangements with the employer, we recognize some jurors are
4 going to be in worse shape than others, losing money. I
5 suppose there are some employers, perhaps, that make this up
6 and others don't.

7 A I work for the only mine in the district that
8 doesn't.

9 Q That doesn't do it, is that right?

10 A Um-hmm.

11 Q I guess that sort of creates a problem. If we
12 let all the people off jury duty that work for that mine I
13 guess pretty soon all the mines would take that out of the
14 contracts.

15 A I doubt that they'd take it out. It's in the
16 contract, they can't take them out.

17 Q Is your own financial condition such that this
18 is just going to create -- nobody likes to lose money, but --

19 A It would if it went for a lengthy period of time.
20 It would just depend if it went for just like a two or three
21 week period there would be no problem.

22 Q You could handle that?

23 A I could.

24 Q Well, as I say, we don't know for sure, but that's,
25 I think, a reasonable estimate.

1 A. Financially I could stand that.

2 Q. If that is the only problem?

3 A. Financially, yes.

4 Q. All right. Let's move onto another subject, then,
5 Mr. Yost.

6 Under our system of justice and philosophy of
7 criminal law a criminal in a criminal action is presumed to be
8 innocent until proved beyond a reasonable doubt to be guilty
9 by the State and put the burden on the State to prove the
10 guilt beyond a reasonable doubt.

11 These particular terms will be explained to you
12 and defined to you -- to the jurors later on in the trial and
13 in my instructions. For the present purposes, what it means
14 is that the defendant doesn't have to do anything to prove his
15 innocence under this system, or philosophy. That burden is on
16 the State to prove him guilty. The practical effect right now
17 is that he must be considered innocent as he sits here today
18 if this principle of law is applied and we do require that it
19 be applied.

20 Of course, you recognize that once the evidence
21 comes in, the case is fully submitted to the jury, then the
22 jurors weigh the evidence and make a determination based on
23 the evidence and the law. But, right now before any evidence
24 has been heard the law cloaks Mr. Creech with a presumption of
25 innocence that we have to give him at this point in the trial.

1 Now, is there anything that would prevent you from
2 giving the defendant here the full benefits of this principle
3 and consider him innocent right now?

4 A. I've read a great deal about this trial.

5 Q. Have you?

6 A. Yes, before the changing of venue up here I read
7 a considerable amount on it. Other than that I could.

8 Q. Let me just pursue that a little. We would like to
9 know just what you remember about any reported facts you have
10 read or heard about the case; in other words, sort of asking you
11 to test your memory to see how -- what stands out in your
12 memory and what you can actually report of the purported facts
13 that you have read or heard about the case.

14 A. My father-in-law has access to the Boise
15 Statesman.

16 Q. I see.

17 A. And I've read a considerable amount about the
18 future of this -- outcome of this trial, possibility of being
19 extradited to Oregon, particularly Eugene, Oregon, and actually
20 him being taken to other states also where other bodies have
21 been shown and dug up.

22 Q. I see. You feel that, based on this information
23 you have received, that you have formed at this time an
24 unqualified opinion as to the guilt or innocence of the
25 defendant?

1 A Yes, I have, Your Honor.

2 Q You feel that it would be difficult, or impossible
3 for you to set this aside and judge the case solely on the
4 evidence produced here in court?

5 A Yes, I do.

6 MR. ROBINSON: I would challenge, Your Honor.

7 THE COURT: Resist the challenge?

8 MR. THOMAS: I would like to ask a couple of questions
9 if I may, Your Honor.

10 THE COURT: Go ahead.

11

12 VOIR DIRE EXAMINATION

13 BY MR. THOMAS:

14 Q Mr. Yost, when you say it's impossible for you to
15 come into this trial with an open mind, are you saying that
16 you feel that you would be completely unable to put aside what
17 you've heard and look at the evidence objectively in this case?

18 A Well, I could look at the evidence objectively but
19 I already have an opinion formed so -- I mean, I couldn't
20 change that.

21 Q Well, would it be possible for you to consider the
22 possibility at least that your opinion may be wrong if the
23 material that you read in the newspaper may be wrong?

24 A I don't think they could all be wrong, really,
25 not when I've read it -- well, other than the Boise Statesman

1 the Spokesman Review also carried the same information and I
2 don't believe they are wrong.

3 Q What information are you thinking of in particular?

4 A Specifically Eugene, Oregon, where the body was
5 supposedly found in the same area that Mr. Creech lived. I
6 believe it was in Nevada where -- for one instance he was
7 staying and bodies were shown and they were dug up.

8 Q Now, the charge in this case, Mr. Yost, is
9 First Degree Murder and relates to two specific instances.

10 A In the State of Idaho.

11 Q Could you take a look at that evidence and make a
12 determination, objectively putting out of your mind any of
13 these other considerations about whether this man did that or
14 not?

15 A Yes, I believe I could just on the evidence,
16 based in the State of Idaho.

17 Q In other words, you feel you could go into this
18 trial if you were a juror and look at the question presented
19 to -- namely whether the defendant was guilty of this crime
20 charged and find him innocent if you didn't find enough evidence
21 that convinced you beyond a reasonable doubt he was guilty of
22 the two murders in the first degree with which he's charged?

23 A For the State of Idaho? Yes. But, the thing is,
24 I still honestly believe that my own opinion is -- over the
25 whole material, the evidence, you know, everything brought into

1 focus, that I couldn't honestly change my opinion in the long
2 run. I feel that I can't change that fact that I believe that
3 he's -- you know, he's guilty altogether.

4 Q You think you have an opinion that he's guilty of
5 the two crimes that he's charged with here?

6 A In the State of Idaho and the others also.

7 Q You could not, under any circumstances or any
8 state of the evidence, change your opinion about that?

9 A Not overall, I can't.

10 MR. THOMAS: We don't resist the challenge in that
11 case, Your Honor.

12 THE COURT: Okay. We will excuse you, Mr. Yost. We
13 appreciate your frankness in the matter.

14 THE WITNESS: Thank you.

15 THE COURT: You will be subject to call for other
16 trials. We don't have a specific trial date now for you to
17 report on, but you may be called by the Jury Commissioner.
18 We appreciate your time you spent here.

19 The next juror is number two, Betty Barr.

20 I'll ask the Clerk to draw another stand-by name.
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BETTY M. BARR,

a prospective juror herein, having been first duly sworn, took
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q Mrs. Barr, I want to ask you a few questions first
and then the attorneys will want to ask you a few. Everything
we say here has to be reported by the Court Reporter sitting
here (indicating) so if you will please speak loudly enough
for him to hear you and he can't report a nod, so you will have
to answer audibly to the questions you are asked.

A. Yes, sir.

Q I want to visit with you for just a minute about
the procedure we're going to follow with the jurors once we
get under way as far as taking evidence and the jury has been
selected. At that point we're going to do what we call
sequester the jury; which means the jurors won't be able to go
home during recesses, during the eveing. They will be housed
in a motel and make arrangements at the Stardust for this
purpose and take their meals at restaurants under the
supervision of the Bailiffs and this will continue for the
duration of the trial.

Right now we don't know exactly how long the
trial will last. Our estimate is three weeks, that is, probably,

1 a reasonable estimate.

2 We need to know whether there's anything in your
3 personal life, your home situation, work situation involved
4 in that, that would make this impossible for you, or create an
5 extreme hardship. We recognize it will be inconvenient for all
6 jurors, but we can't phrase it in terms of convenience,
7 extreme hardship or real serious problems.

8 A. No problems, Your Honor.

9 Q. You can handle the situation?

10 A. Yes.

11 Q. We'll go on to something else, then.

12 Under our system of justice and philosophy of
13 criminal law a defendant in a criminal action is presumed to
14 be innocent until his guilt is established beyond a reasonable
15 doubt by the State. These terms will be defined and explained
16 in more detail later on in the course of the trial.

17 But, for the present purposes, probably enough to
18 tell you the effect of this is that the defendant doesn't have
19 to do anything to prove he's innocent because the law cloaks
20 him with the presumption of innocence at this stage of the
21 proceeding, you understand?

22 A. I understand.

23 Q. Obviously, when the evidence comes in and case is
24 fully submitted then the jurors will have to weigh that
25 evidence under the law and determine the issue. Right at this

1 stage, before any evidence has been heard or presented, as I
2 say, the defendant, Mr. Creech, must be considered to be
3 innocent, if we follow this philosophy, which you are -- we
4 are required under our principle of law.

5 Just wondering whether you are able at this time
6 to give Mr. Creech the full benefit of this principle and
7 consider him innocent as he sits here at this stage of the
8 proceeding?

9 A. I am.

10 Q. Have you heard or read anything about this case
11 in the newspapers or on radio or TV or from any other source?

12 A. I read what was in the paper here about the
13 change of venue when it was scheduled up here and I heard it
14 mentioned once in Boise last spring. That's all.

15 Q. Can you just -- we do need to, probably, pursue
16 a little what you distinctly remember at this point about any
17 purported facts about the case or about Mr. Creech that you've
18 heard. Do you have a memory of any specific purported facts
19 about the case or Mr. Creech that you heard from these sources
20 or read?

21 A. No, I don't. I don't remember -- my brother was
22 talking about it but I wasn't really listening because I hadn't
23 read about it myself before I went there and I didn't know what
24 he was talking about and I said "What are you talking about?"

25 He said "Oh, that trial at Cascade".

1 I said "Oh". My sister-in-law and I were
2 talking and that's all I heard.

3 Q That was the extent of it?

4 A Yes.

5 Q I take it what you're saying is you haven't formed
6 any opinion as of guilt or innocence?

7 A I really don't know anything about it.

8 Q Go on to another subject, then, Mrs. Barr.

9 Under our Idaho law neither the jury nor the Judge
10 plays any part, or has any discretion in the determining what
11 penalty should be imposed for First Degree Murder. The
12 legislature has passed a law that takes that completely out of
13 the hands of the jury and the Judge. The legislature has
14 provided that the death penalty is mandatory for First Degree
15 Murder.

16 I say that's the legislative determination and
17 they just don't leave the jury or the Judge any discretion in
18 that regard if a defendant is convicted of First Degree Murder.

19 Now, knowing this to be the law I'm wondering
20 whether you have any personal beliefs or feelings about the
21 death penalty which would just prevent you from considering a
22 First Degree Murder conviction under the evidence?

23 A No, I don't.

24 Q You feel you could, in spite of this, fairly weigh
25 the evidence under the law and make a determination on guilt or

1 innocence?

2 A. Try.

3 Q. It will be the function of the jury to determine
4 the facts, weigh the credibility of witnesses and determine
5 the weight to be given to the evidence introduced. It's up
6 to the Judge to determine what the law is and instruct the jury
7 on the law. Occasionally I think jurors are surprised,
8 perhaps, what some of the law they are instructed on is and
9 maybe not -- disagree with it at times.

10 However, under their oath, they are required to
11 accept the law as given by the Court. Could you do this?

12 A. Yes.

13 Q. Do you know of anything else that I haven't
14 touched on that would prevent you from being a fair and
15 impartial juror to both sides in this case?

16 A. No.

17 THE COURT: Counsel may inquire.

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1 VOIR DIRE EXAMINATION

2 BY MR. REMAKLUS:

3 Q Mrs. Barr, you've told the Judge that you could
4 make these arrangements to be away?

5 A Yes.

6 Q For any time this might take?

7 A That's fine.

8 Q I see your children are grown and away from home
9 now?

10 A Yes, they are both married and gone.

11 Q What do they do for a living?

12 A My son is a chemical metallurgist for U.S. Borax
13 Corporation in Anaheim, California. My daughter is a
14 graduate student at the University of Idaho in bacteriology.

15 Q Your husband has a highly skilled position; doesn't
16 he?

17 A He's manager of the metallurgy department for
18 Sunshine Mining Company.

19 Q What's your educational background?

20 A I have a high school education.

21 Q Um-hmm. You and Mr. Barr have any hobbies?

22 A Oh, camping and, you know, I do some needlework
23 and that's about it.

24 Q Do you -- are you active in social work,
25 volunteer work in your community?

1 A Not very, no. I have done a little with the
2 children in that school there in Kellogg, but not very much,
3 transporting children.

4 Q Um-hmm. You take the Spokane papers?

5 A Yes, the Spokesman Review.

6 Q Um-hmm. Do you take other magazines?

7 A Magazines, yes.

8 Q What kind of reading do you and your husband enjoy?

9 A Well, we take Time magazine and Sports Illustrated
10 and the Smithsonian magazine, National Geographic. I take
11 some ladies' magazine, paper from Women's Wear Daily and -- let
12 me think. Good Housekeeping, McCalls.

13 Q Do you folks watch television, Mrs. Barr?

14 A Well, some, but not a lot. My husband likes the
15 sporting events.

16 Q Um-hmm. These lawyer programs wouldn't be
17 misleading to you, then, if you watched any of them?

18 A I never watch them.

19 Q If you are selected here, Mrs. Barr, there will be,
20 I'm sure, long and detailed instructions that you'll be
21 instructed to follow very closely and you will have to accept
22 the Judge's instructions as being the law in the case. You
23 wouldn't have any difficulty with that, I'm sure, would you?

24 A No.

25 MR. REMAKLUS: We'll pass the juror for cause,

1 Your Honor.

3 VOIR DIRE EXAMINATION

4 BY MR. ROBINSON:

5 Q Mrs. Barr, I'm going to be asking you some
6 questions just like the Judge and Mr. Remaklus did.

7 We're not intending to pry into your private
8 affairs, necessarily, it's just that we have to elicit
9 answers to questions so that we can do our job and that job is
10 to select an unbiased and unprejudiced jury. So, will you take
11 my questions in that light?

12 A Yes.

13 Q All right. With what church are you affiliated?

14 A None.

15 Q Do you believe in God?

16 A Yes.

17 Q Do you believe that Satan exists?

18 A Not really, no.

19 Q And have you heard any conversations about
20 witchcraft being practiced here in the Shoshone County,
21 Silver Valley area?

22 A No.

23 Q Do you know whether or not a John Birch Society
24 exists here in North Idaho?

25 A Yes, I believe it does.

1 Q. Where?

2 A. Well, I don't know if it does right now. I know
3 we were invited to a meeting one time at the high school. It's
4 been several years ago and I assume it's still in force, but I
5 really don't know for sure.

6 Q. Are you a member?

7 A. No.

8 Q. Do you receive any of their literature?

9 A. Not that I knew that it was John Birch literature,
10 no.

11 Q. Have you or any member of your family, close
12 friends, been victims of any crimes?

13 A. No.

14 Q. Any members of your family run afoul of the law,
15 charged with any crimes --

16 A. No.

17 Q. -- barring traffic citations, things of that
18 nature?

19 A. No.

20 Q. Have you been around any persons who have used
21 drugs and narcotics?

22 A. Not that I knew that they were.

23 Q. Do you have a basic prejudice against persons
24 who have made use of drugs and narcotics?

25 A. I really don't know about that. I've never been

1 in contact with anybody who did. I don't know what their
2 behavior would be. I might be.

3 Q The mere fact that a person may admit that they
4 do use drugs and narcotics, would this prejudice that you might
5 have work over to the extent that it would affect your judgment
6 on a charge of murder?

7 A I don't know, it might. I really don't know. It
8 would depend on what kind of narcotics, I suppose.

9 Q The very strongest and very worst, cocaine, heroin.

10 A Well, I'm not much on people using drugs.

11 Q Do you feel that fact alone might tend to influence
12 your thoughts on a person who is charged with murder that
13 admits they do use drugs?

14 A Well, it might. I don't know for sure. I've
15 never really thought about it.

16 Q There's an awful lot of things in this case, of
17 course, that no one could give advance warning and such, of
18 course, that's the purpose of these questions, Mrs. Barr; to
19 examine ourselves as much as we can to determine if we are.

20 A I suppose that I would be prejudiced against --
21 I'm against the use of drugs. I was so careful for my own
22 children not to use any that I'm sure that I would feel pretty
23 strongly about it.

24 Q Have you been aware, of course, that drugs have
25 been available in the schools around this area?

1 A. I am very much aware of it, yes.

2 Q. Let me go a little further here, Mrs. Barr, in
3 relationship to the facts that Mr. Creech has been, and is now,
4 incarcerated in the County Jail here. Does that fact raise any
5 presumption that he must be guilty of the charge, otherwise
6 they wouldn't have him locked up?

7 A. No.

8 Q. And does the fact that we have -- we are flanked
9 by two Deputies here, raise any presumption in your mind that,
10 in fact, he is a dangerous person?

11 A. No.

12 Q. After testimony comes in regarding the use of
13 drugs, would it then be necessary that Mr. Creech come forward
14 with more evidence to prove his innocence of the crime itself
15 that is charged against him?

16 A. He doesn't have to prove his innocence.

17 Q. You would, in spite of testimony regarding drugs,
18 you would carry through the presumptions of innocence and
19 form your opinion only on the facts of the case and the facts
20 of the charge?

21 A. I'd try.

22 Q. Try, but do you feel this prejudice you have on
23 the use of drugs might influence that decision?

24 A. I don't know. Probably would.

25 MR. ROBINSON: I'd challenge for cause, then,

1 Your Honor.

2 MR. THOMAS: We resist the challenge, Your Honor.

3 THE COURT: Mrs. Barr, I want to hear some argument
4 on this problem. It would be better if we took it up out of
5 your presence if you'd step back in the jury room and don't
6 discuss the questioning here with the other jurors please.
7 We'll call you when we're ready to proceed and we'll want you
8 to come back out.

9 (Prospective juror left the courtroom.)

10 THE COURT: Well, I'm concerned about this line of
11 questioning. This is about the second or third time it's
12 happened, Mr. Robinson. I'm not sure this matter will come
13 to the attention of jurors except to the extent you've brought
14 it to their attention and certainly has not been the State or
15 Court that's brought it to their attention. You are the one
16 that's done it.

17 Now, if this does come in as evidence in the case
18 it will be entirely proper for the jurors to consider it in
19 weighing their evidence because if it comes in it will be
20 relevant evidence and material evidence or it won't get in. If
21 it gets in they'll have to weigh it because it will be evidence
22 for them to consider. So, I don't see that a juror can be
23 disqualified because they say they are going to consider
24 relevant evidence that's admitted in the case and that will
25 affect their verdict. It's supposed to if it's admitted.

1 If it doesn't get admitted, then they shouldn't
2 consider it. But, it appears to me you are bringing it to their
3 attention without it, maybe, even getting in evidence and
4 that disturbs me, frankly, and I'm not going to challenge a
5 juror because you bring something to their attention that nobody
6 else does.

7 Now, I don't think it's been really shown here
8 that apart from what -- if it is relevant and material evidence,
9 apart from the point of them really considering it and weighing
10 it with the other evidence that you've shown that they could
11 give any undue weight to it; or that they would really relieve
12 the State of its burden of proving guilt beyond a reasonable
13 doubt.

14 I have a hard time drawing the line between
15 proper consideration of this evidence if it gets before them
16 and the improper consideration. I'm of the opinion it wouldn't
17 get before them unless, at least as far as I'm concerned,
18 unless you bring it before them yourself. I'm not going to let
19 the State prove -- unless it's so intrinsically connected with
20 other evidence to prove other offenses and things in this case.
21 I've already told Counsel that.

22 So, for that reason I'm inclined to deny the
23 challenge but I'll hear what you have to say about it.

24 MR. ROBINSON: I'm weighing the Court's words,
25 Your Honor. I'm looking at the overall defense in this case

1 and I agree with the Court that it is a very thin hairline
2 circumstance and, of course, anticipating the defense I know
3 that this information will be a part of the testimony.

4 THE COURT: If it is then it has to be weighed by the
5 jury along with everything else that comes in and considered by
6 them and it will be proper for them to do that. Otherwise it
7 shouldn't be let into evidence.

8 MR. ROBINSON: I agree with the Court's observations
9 and I appreciate them, Judge Durtschi. There are many people,
10 of course, who do use drugs that don't get involved in any
11 killing. The point that I'm trying to arrive at is whether
12 or not the prejudice is so strong in a juror on the use of
13 drugs in itself that this would tend to affect their judgment
14 when they are possibly sitting on the fence, to make a decision
15 as to whether or not Tom Creech did in fact kill these two
16 that he is charged with.

17 THE COURT: Let me just interrupt you and say this:
18 The fact that people are prejudiced against drugs per se to me
19 doesn't disqualify them as jurors. I am prejudiced against
20 the use of drugs too and I think most ordinary citizens are and
21 I don't think that disqualifies them to sit as jurors unless
22 that prejudice would go to the extent that if such evidence
23 came in properly and it was to be considered it would so
24 overrule them that they would find the defendant guilty of any
25 crime even though it wasn't the charge of a drug crime.

1 I don't think that's really been established that
2 just -- that this prospective juror, just because she has a
3 personal prejudice against the use of drugs and that she would
4 let that lessen the burden on the State and find the defendant
5 guilty of First Degree Murder because of that prejudice. You
6 haven't established that yet through your questioning as far
7 as I'm concerned.

8 MR. ROBINSON: Um-hmm.

9 THE COURT: It seems to me that's the real crux of the
10 thing you have to establish. I'll grant the challenge if that
11 is once established that her prejudice is so strong in this
12 regard that she'd -- if drug evidence came before her and she
13 found out about it she'd convict him with any crime he was
14 charged with; whether it related to drugs or not. But, I don't
15 think that's been established.

16 MR. ROBINSON: No, Your Honor, and I'm sure from the
17 answers that Mrs. Barr has given to us that I could go to that
18 extent and I would still come up with an evasive -- but I, of
19 course, must go into this line of questioning to evaluate the
20 use of my pre-emptories.

21 THE COURT: I'm not saying you can't, but we're faced
22 with a challenge here of a juror because you opened it up and
23 gone into it and I'm not inclined to grant that challenge. If
24 you want to go into those matters to test whether you should
25 exercise a pre-emptory challenge that's fine, I'm not

1 criticising you for that at all. But, you are asking me to
2 release her for cause, not on a pre-emptory challenge.

3 MR. ROBINSON: I believe, Your Honor, I probably have
4 gone as far with Mrs. Barr that I dare go without destroying
5 an effectiveness if she is not pre-emptory challenged and it's
6 a thin hairline as the Court well realizes that if pushed
7 overboard, then if necessary I would have to use a pre-emptory.

8 THE COURT: Well, does the State want to add anything?

9 MR. THOMAS: I don't think so, Your Honor.

10 MR. REMAKLUS: No, not at this point. This point has
11 been bothering us in our evening discussions of how far we
12 should permit this kind of questioning to go but, no, we have
13 no further comment at this point.

14 THE COURT: My position is simply this, Mr. Robinson.
15 The mere fact that you established that a juror is prejudice
16 against the use of drugs, to me, doesn't qual -- disqualify that
17 person as a juror in and of itself. Likewise the fact that if
18 you represent to them this is going to come into evidence and
19 they say, well, they are going to consider that evidence and
20 weigh it, doesn't disqualify them because that would be their
21 duty to do that. I think it has to go to the point where they
22 will say that their prejudice goes to the extent that they would
23 simply convict such a defendant of anything he's charged with;
24 whether it relates to drugs or not if they found out about that
25 and I don't think we've really reached that point with this

1 juror.

2 I want to ask her a couple of questions and I'll
3 bring her back and ask her the questions and then you can
4 pursue it again if you want to.

5 MR. ROBINSON: All right. Thank you, sir.

6 THE COURT: Bring Mrs. Barr back.

7 (Whereupon the prospective juror re-entered the
8 courtroom.)

9

10 FURTHER VOIR DIRE EXAMINATION

11 BY THE COURT:

12 Q Mrs. Barr, I just want to pursue this matter a
13 couple of questions of my own here in relation to your feeling
14 about the use of drugs and how it might affect your deliberations
15 or weighing the evidence in this case.

16 Let me first state to you, of course, if such
17 evidence comes before you it will only come before you in the
18 trial because the Court has determined that it's relevant and
19 material and to that extent it isn't improper for you to
20 consider it and weigh it for the purposes for which it's
21 offered. You understand that?

22 A Yes.

23 Q The point we're concerned about is whether your
24 feeling about the use of drugs which, if it should come out
25 that if this is involved in this case and is relevant and

1 material for some reason, if it should come up, whether your
2 feeling is so strong about this that just this one item of
3 evidence, regardless of the purposes for which it was offered,
4 or the point to which it's relevant would create such a feeling
5 of prejudice in your mind that you would simply relieve the
6 State of its burden of proving the defendant guilty beyond a
7 reasonable doubt; bearing in mind that the charge here doesn't
8 have anything, per se, to do with the use of drugs, it isn't
9 a drug charge or drug offense. It's murder in the first degree,
10 whether you feel this assertion and feeling against drugs is
11 so strong that you would just simply not require the State to
12 prove him guilty of this particular charge of murder beyond a
13 reasonable doubt and would tend to convict him of that charge
14 without it being proved beyond a reasonable doubt just because
15 he used drugs.

16 A Oh, no, I don't think so. I can understand a
17 habit, I guess. I smoke like a fiend myself and it would not
18 just because -- what you are saying is that I would think a
19 man guilty just because he mentioned drugs?

20 Q Yes, guilty of murder.

21 A Oh --

22 Q Not guilty of the use of drugs, guilty of murder.

23 A Oh, I see. Well, no, I guess not.

24 Q In other words, this evidence may, if it comes in
25 at all before you, Mrs. Barr, it will have to be relevant to

1 some point and you'll have to weigh it as far as the purposes
2 for which it's presented, of what effect it has on this charge
3 of murder. But, the thing we're concerned with; we'll just
4 skip that point and just come to the ultimate conclusion and
5 say well, if he uses drugs he must be guilty of murder.

6 A No, I don't think so.

7 THE COURT: Well, if you want to pursue it.

8 MR. ROBINSON: No, Your Honor. I pass the juror for
9 cause.

10 THE COURT: All right, Mrs. Barr, that concludes the
11 questioning, then. We'd ask you to step back in the jury room
12 and not discuss the questioning with the other members of the
13 panel as they come in.

14 MR. ROBINSON: Your Honor, may we request a recess?

15 THE COURT: Yes. I guess we're up to the State's
16 fifth pre-emptory.

17 MR. REMAKLUS: Yes.

18 THE COURT: We will exercise that after the recess,
19 then.

20 We'll take a ten-minute recess.

21 (Recess taken.)

22 THE COURT: Counsel ready to proceed?

23 MR. ROBINSON: Yes, Your Honor.

24 THE COURT: State's fifth pre-emptory.

25 All right, the stand-by juror is number 84,

1 Fred Patano.

2 I'll have the Clerk draw another stand-by juror.

3
4 FRED R. PATANO,
5 a prospective juror herein, having been first duly sworn, took
6 the stand and testified as follows:

7
8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q Mr. Patano?

11 A Yes.

12 Q I'm going to ask you a few questions, Mr. Patano,
13 and then the attorneys would have some. Everything we say has
14 to be reported by the Court Reporter, so if you will speak
15 loudly so he can hear you and he can't get nods if you don't
16 answer audibly.

17 I want to first discuss with you the procedure
18 we're going to use with the jurors once we get under way as far
19 as taking evidence and getting the trial proper.

20 When we reach that point the jury will be
21 sequestered; which means the jurors won't be able to go home
22 during recesses at night, we'll house the jurors in a motel.
23 Arrangements have been made at the Stardust for this and we'll
24 take their meals at restaurants under the supervision of the
25 Bailiffs. This will continue during -- for the duration of

1 the trial.

2 None of us know how long the trial will take right
3 now. We estimate three weeks and that is, probably, a reasonable
4 estimate.

5 The first thing we need to know is whether there's
6 anything in your personal life or home situation, your work
7 situation, that would make this impossible for you to do or
8 create an extreme hardship.

9 Now, we know it's going to be inconvenient, but
10 we don't talk about convenience, but whether there's something
11 particularly in your situation that would just create a real
12 severe situation for you if you had to do this.

13 A. Well, I would think in my line of business it
14 would be an extreme hardship because I own a bar in Kellogg and
15 I happen to work it in the 13 hours a day and it would -- I
16 would have to hire somebody, two people to replace me. I work
17 during the lunch and, then, I tend bar every night and I would
18 have to hire two people. I have only been in business for six
19 months and I don't really know if I could afford to do it.

20 Q. Is this a sole proprietorship?

21 A. Yes. It was a partnership up to about three weeks
22 ago and I dissolved the partnership and I am now the sole
23 proprietor.

24 Q. It means that you'd just have to close the entire
25 business down unless you hired somebody; is that what it means?

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A. Right.

MR. ROBINSON: I'd stipulate, Your Honor.

MR. REMAKLUS: I think it would be a real hardship.
We have no objection.

THE COURT: All right, Mr. Patano, we will excuse you, then, under those circumstances. We appreciate your appearance here. You may be subject to call for other trials that will be shorter in nature and won't involve sequestering. But, the Jury Commissioner will call you for that purpose.

THE WITNESS: Thank you very much.

THE COURT: You may -- I ask you not to discuss the questioning with other members of the panel if you happen to run into them.

THE WITNESS: Okay.

THE COURT: All right, the stand-by juror is number 14, David Charles.

I'll ask the Clerk to draw a stand-by juror.

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DAVID L. CHARLES,
a prospective juror herein, having been first duly sworn, took
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Mr. Charles, I want to ask you a few questions
first and then the attorneys will, perhaps, have some
questions. Everything we say has to be reported by the
Court Reporter so if you will speak loudly enough for him to
hear you and he can't get a nod so you'll have to answer
audibly, okay?

A. Okay.

Q. I want to visit with you first about how we'll
handle the jurors during this trial once we get started
taking evidence. The jury is completely selected and sworn;
at that point the jury will be sequestered; this means that
they won't be able to go home at recesses or in the evening,
the jury will be housed in a motel. We've made arrangements
at the Stardust for that. They'll take their meals at
restaurants under the supervision of the Bailiffs and this
will go on for the duration of the trial.

Now, we don't know -- no one knows at this point
how long the trial will last. Our estimate is about three
weeks and that's, probably, a reasonable estimate.

1 The first thing we need to know is whether there's
2 anything in your personal life, your home situation or work
3 situation that would make this impossible for you or be an
4 extreme hardship. Now, we know at the outset it's going to be
5 inconvenient for all the jurors so we're not just talking about
6 mere inconvenience, but we want to know whether there's some
7 special hardship that you'd be subjected to because of this.

8 A. No.

9 Q. You feel you could handle the situation all
10 right?

11 A. Yes.

12 Q. All right. We'll go on to something else, then.

13 Mr. Charles, under our system of justice and
14 philosophy of criminal law a defendant in a criminal action is
15 presumed to be innocent until his guilt is established beyond
16 a reasonable doubt and the burden is on the State to prove
17 guilt beyond a reasonable doubt. Now, those terms will be
18 defined for you later on in the trial in more detail. But, for
19 the present purposes what this means is that the defendant
20 doesn't have to do anything to prove his innocence. The burden
21 is on the State to prove him guilty, see?

22 Now, of course, when the evidence has all been
23 presented and the case is finally submitted to the jury then
24 the jury will have to weigh that evidence under the law and
25 make a decision to determine guilt or innocence under the

1 instructions of the court and determine whether the State has
2 proved guilt beyond a reasonable doubt. Right at this stage
3 of the proceeding, before any evidence has been received, this
4 principle, as I've explained, means the defendant, Mr. Creech,
5 must be considered to be innocent.

6 Now, are you able right at this time to give him
7 the full benefit of this principle and consider him to be
8 innocent right now?

9 A. Yes.

10 Q. Let me ask you whether you've read or heard
11 anything about this case in the newspapers or on radio or TV or
12 from individuals?

13 A. Well, I didn't know anything about it until they
14 sent me the summons.

15 Q. Until they sent you the summons?

16 A. Um-hmm.

17 Q. Have you read or heard anything that purported to
18 be facts about the case or about Mr. Creech since that time;
19 other than what you heard in court the other day?

20 A. No.

21 Q. So, you are saying you just don't know a thing
22 about the case or Mr. Creech right now?

23 A. That's right.

24 Q. Other than what I told you in court the other
25 day?

1 A. Right.

2 Q. I want to take up one other subject with you,
3 then, Mr. Charles.

4 Under our Idaho law neither the jury nor the
5 Judge has any discretion as to the penalty to be imposed for
6 First Degree Murder; which is the charge here. The legislature,
7 State Legislature, has seen fit to pass a law to make the death
8 penalty mandatory for First Degree Murder; this means the
9 legislature has made that determination and taken it out of
10 the hands of the jury and Judge to have anything to do with
11 that.

12 As a result, the only question the jurors will
13 be voting on and considering is the issue of guilt or
14 innocence under the instructions of the Court; the Judge,
15 likewise, won't have any discretion, the legislature is
16 responsible for this and neither the jury nor the Judge.

17 Knowing this to be the law do you have any
18 personal beliefs or feelings about the death penalty which
19 would prevent you from fairly considering the evidence and the
20 law bearing upon the charge of First Degree Murder?

21 A. No.

22 Q. You could consider that -- the evidence, and
23 weigh the evidence and consider guilt or innocence of First
24 Degree Murder; is that what you are saying?

25 A. Um-hmm.

1 Q Under our system it is the function of the jury
2 to determine the facts to test the -- weigh the credibility
3 of witnesses and weight to be given to the evidence. The
4 function of the Judge is to explain the law to the jury. I
5 think, sometimes, jurors find that they are surprised by what
6 may be some principle of law that the Judge instructs them on
7 and they might even find out they disagree sometimes with
8 some of those principles. But, under their oath they are
9 responsible to accept the law as it is explained by the Court.
10 Do you feel you could do this in good conscience?

11 A Yes.

12 Q Do you know of anything that -- whether I've
13 asked you or not, that would prevent you from being a fair
14 and impartial juror to both sides in this case?

15 A No.

16 THE COURT: Counsel may examine.

17
18 VOIR DIRE EXAMINATION

19 BY MR. REMAKLUS:

20 Q Mr. Charles, where is Murray, where you live?
21 Is it in the mountains?

22 A Yes.

23 Q Is it a small place?

24 A Yes.

25 Q According to your questionnaire you've only been

1 here in the State of Idaho for four years, is that right?

2 A. Yes.

3 Q. Where did you live before you came here,

4 Mr. Charles?

5 A. Illinois.

6 Q. And did you come out here with your mother and

7 father?

8 A. Yes.

9 Q. What kind of -- what does your father do for a

10 living?

11 A. He's an operating engineer. He runs a Cat.

12 Q. Um-hmm. And who does he work for?

13 A. That's a good question.

14 Q. Is it a mining company or road construction?

15 A. It's union.

16 Q. Um-hmm. And what is your job with the Forest

17 Service?

18 A. I'm a crew boss.

19 Q. And are you kind of -- you build roads or trails

20 or something?

21 A. No, piling brush and burn cat piles and that.

22 Q. How long have you been a boss up there?

23 A. About four months.

24 Q. Is that a year-round job?

25 A. No. I work from April to December.

1 Q But, you would be working today if you weren't
2 here, right?

3 A Yes.

4 Q Of course, with working for the government you
5 can -- you are not jeopardizing your job by being away, are
6 you?

7 A No.

8 Q What is your educational background, Mr. Charles?

9 A Well, I didn't finish high school, I went to the
10 eleventh grade.

11 Q Um-hmm. Was that back in Illinois?

12 A No, this was here.

13 Q Um-hmm. What -- do you live with your folks now?

14 A Yes.

15 Q Do you have brothers and sisters that are younger
16 than you?

17 A Now, I'm the youngest. I've got four brothers
18 and one sister.

19 Q Um-hmm. Do they live in this area?

20 A I've got a brother that lives in Pinehurst and
21 I've got a brother that lives down from us, about seven miles.

22 Q What kind of work do they do?

23 A My oldest brother that's here, he's laid off
24 from the mines, got a back injury. My other brother, he works
25 at the Lucky Friday.

1 Q Um-hmm. Have any of your family or any of your
2 friends had any -- been in court or had any trouble with the
3 law?
4 A No.
5 Q What kind of hobbies do you have?
6 A None, just working on cars.
7 Q Do you hunt and fish and do things like that?
8 A Yeah.
9 Q Do you go out camping?
10 A Not -- very seldom.
11 Q Of course, you live out in the hills, you don't
12 have to go camping, do you? Do you take the daily papers up
13 there?
14 A Yeah, but it is always a day late.
15 Q Um-hmm.
16 A I never read it anyway.
17 Q Um-hmm. Do you folks watch television in the
18 evenings?
19 A Yeah, when I'm home.
20 Q Do you subscribe to any kind of magazines?
21 A Yeah, I think they do, sports magazines and
22 Time.
23 Q Do you read those at home?
24 A No.
25 Q What -- do you buy any magazines when you go to

1 the store or buy anything off the news rack?

2 A. No.

3 Q. Are you interested in sports, football and

4 things like that?

5 A. I like to watch baseball and that, but --

6 Q. Um-hmm. Do you have a religious preference?

7 A. No.

8 Q. Do your folks, do they attend church regularly?

9 A. No.

10 Q. If you are finally selected here as one of the

11 jurors, as the Judge has already advised you, it will be your

12 duty to listen to the evidence, analyze it and make up your

13 mind as to whether or not we've proved these charges, understand

14 that?

15 A. Yes.

16 Q. Do you think the fact that there's a death

17 penalty involved here, would that influence your judgment or

18 change your mind as to what you believe was proved by the

19 evidence?

20 A. No.

21 MR. REMAKLUS: Pass the juror for cause, Your Honor.

22

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VOIR DIRE EXAMINATION

BY MR. ROBINSON:

Q Mr. Charles, has any member of your family, your good friends, been victims of any crimes?

A. No.

Q Do you believe in God?

A. Yes.

Q Do you believe that Satan exists? The devil?

A. I don't know, that's a hard question.

Q Mr. Charles, you know yourself better than anyone else in this courtroom knows you. Is there anything in your personality or your make-up that you would feel that would disqualify you to sit as a juror in this case?

A. No.

Q You feel you are unbiased, unprejudiced and if selected as a juror you can give a fair trial in this matter?

A. Yes.

MR. ROBINSON: We'd pass for cause, Your Honor.

THE COURT: Mr. Charles, we will ask you to step back into the jury room, then, and wait there and ask you not to discuss the questions that's taken place here with any of the other jurors as they come in. Thank you.

The stand-by juror is number 51, Wayne Jacobs.

I'll have the Clerk draw another stand-by juror.

1 WAYNE L. JACOBS,
2 a prospective juror herein, having been first duly sworn, took
3 the stand and testified as follows:
4

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q Mr. Jacobs, I'm going to ask you a few questions
8 first here and then the attorneys will each ask you some
9 questions. Everything we say has to be reported by the
10 Court Reporter who is sitting right here (indicating) so, if
11 you will answer loudly enough for him to hear you and not nod
12 your head. He can't get nods, okay?

13 A Okay.

14 Q Can you hear me all right?

15 A Yes, sir.

16 Q All right. I want to visit with you first
17 about how we'll handle the jurors as far as the procedure
18 once this trial gets started as far as taking evidence. When
19 the jury is completely selected and we reach that point we'll
20 do what we call sequester the jury; which means the jurors
21 won't be able to go home at recesses or in the evening. The
22 jurors will be housed at a motel, we've made arrangements at
23 the Stardust for this. They will take their meals at
24 restaurants under the supervision of the Bailiffs and this
25 will continue for the duration of the trial.

1 We don't know at this point how long the trial
2 will last. Our best guess is about three weeks and that's
3 probably a reasonable estimate.

4 The first thing we have to know is whether there
5 is anything in your personal life, your home situation or
6 work situation that would make it impossible for you to do
7 this; to serve under those circumstances, or it would create
8 an extreme hardship. I know -- we know it's going to be
9 inconvenient for all jurors, so I don't ask in terms of
10 mere convenience but whether there's something in your
11 situation that would simply make it a real serious matter
12 for you.

13 A. No, sir.

14 Q. You can handle this kind of a situation, then?

15 A. Yeah, I guess I could, yes.

16 Q. All right. Move to another subject, then.

17 Under our system of justice and philosophy of
18 criminal law a defendant in a criminal action is presumed to
19 be innocent until his guilt is established beyond a
20 reasonable doubt by the State. In other words, this puts the
21 burden on the State to go forward with the evidence and prove
22 the defendant guilty beyond a reasonable doubt. Those terms
23 will be explained to you in more detail when I give you my
24 instructions at the end of the trial.

25 But, for the present purposes what it means is

1 that the defendant doesn't have to do anything in this trial
2 to prove his innocence. The burden is on the State to prove
3 him guilty. You understand that?

4 A. Um-hmm.

5 Q It also means that as he sits here right now
6 this principle requires him to be considered to be innocent.
7 Now, of course, you understand that when the evidence comes
8 in and when the case is fully submitted the jury will then
9 have to weigh the evidence and under the instructions of the
10 Court and determine whether guilt has been established by the
11 -- beyond a reasonable doubt and determine guilt or innocence
12 at that time.

13 But right now, before any evidence has come in
14 and as Mr. Creech sits here this morning he has to be
15 considered innocent. Now, are you able to give him the full
16 benefit of this principle right now and treat him as innocent?

17 A. Well, I really don't know. I mean, do I have to
18 answer yes or no? I really don't know.

19 Q Let me ask you first, do you have any quarrel
20 with this general philosophy or principle of law that I've
21 just explained to you?

22 A. No.

23 Q In other words, you don't have any real quarrel
24 or question about the principle that says a defendant is
25 innocent until the State proves him guilty beyond a reasonable

1 doubt?

2 A. No.

3 Q And puts the burden on the State to prove guilt
4 rather than putting the burden on the defendant to prove
5 innocence?

6 A. Yes.

7 Q You accept that?

8 A. Yes.

9 Q I'm just wondering, is there any reason why you
10 can't accept that principle in this particular case as far as
11 Mr. Creech is concerned?

12 A. None that I can think of, no.

13 Q Okay. Have you read or heard anything about this
14 case in the newspapers or on radio or TV or from individuals
15 or any other source?

16 A. No. All I've read is what they said, the trial
17 was going to be up here. That's all I know.

18 Q So, right now you haven't read or heard anything
19 that purports to be facts about this case or Mr. Creech; other
20 than what I said in court the other day?

21 A. No.

22 Q Your mind is just completely open, then, as far as
23 this case is concerned right now?

24 A. I've never read anything until I read that piece
25 in the Spokane paper the other day.

1 Q Can you tell us what you remember about that piece
2 that you read? What did it report about the case?

3 A Well, just that the trial was going to be in
4 Wallace and this man was convicted of killing two men on a
5 mountain road.

6 Q Was charged with killing two men?

7 A Yes, yes, excuse me.

8 Q And that's the extent of what you heard about the
9 case?

10 A Yes, what I read.

11 Q Based on that little bit that you've heard, has
12 that caused you to form any opinion as to guilt or innocence
13 of the defendant at this time?

14 A No, I really don't know. I never thought about
15 it that much, really.

16 Q Well, apparently you haven't, then, you feel you
17 are open minded right at this time and can receive the evidence
18 and weigh it and look at it?

19 A Well, now, I don't know.

20 Q You don't know why not?

21 A No, I don't.

22 Q Okay. We'll accept your word on that. I want to
23 take up another matter with you, Mr. Jacobs.

24 Under our Idaho law it's been established by the
25 legislature neither the jury nor the Judge has any discretion

1 as to the penalty to be imposed on First Degree Murder. The
2 legislature has passed a statute that makes the death penalty
3 mandatory for First Degree Murder; which is the charge here.

4 In other words, the legislature has made this
5 decision and taken it completely out of the hands of the jury
6 and the Judge if a defendant is convicted of this particular
7 crime.

8 Now, knowing this to be the law, do you have any
9 personal beliefs or feelings about the death penalty which would
10 prevent you from fairly considering the evidence and law
11 bearing upon the charge of First Degree Murder?

12 A. Would you repeat that, what you said?

13 Q. I'm just wondering whether you have any feelings
14 about the death penalty -- well, let me back up and explain
15 again.

16 Do you understand what I've said so far; that all
17 the jury will be deciding in this particular case is guilt or
18 innocence of First Degree Murder, or some lesser degree, you
19 understand that?

20 A. Yes.

21 Q. The jury won't be voting on the penalty.

22 A. Oh, no.

23 Q. You understand that now?

24 A. Yes.

25 Q. Okay. The legislature has said if the jury

1 convicts the defendant of First Degree Murder the death penalty
2 is automatic and mandatory; that the jury won't be voting on
3 that. You understand?

4 A. Yes.

5 Q. All the jury will be voting on is guilt or innocence
6 under the instructions of the Court, of either First Degree
7 Murder or some lesser degree. You understand that?

8 A. (No audible response.)

9 Q. Now, I'm wondering if you have any personal
10 beliefs or feelings about the death penalty that would interfere
11 with your weighing the evidence and voting on guilt or innocence
12 of this charge?

13 A. Well, I would feel if he's convicted of it, why,
14 the death penalty should be.

15 Q. You would accept that, then?

16 A. Yes.

17 Q. Well, to explain to you, Mr. Jacobs, that under
18 our system the jurors are the judges of the facts and weigh
19 the credibility of witnesses and the weight to be given to the
20 evidence. The Judge has to instruct the jury on the law and
21 tell the jurors what the law is. The Judge doesn't have to
22 decide the facts. Sometimes I think jurors may be in
23 disagreement with what -- or at least think the law is
24 different than what they thought it was and maybe they even
25 disagree with some principle. But, they do have a duty under

1 their oath to accept the law as stated by the Court. Is there
2 any reason why you couldn't do that?

3 A. Not -- first of all I don't know that Idaho had
4 the death penalty. I really didn't.

5 Q. But, I'll be instructing you on lots of principles
6 of law in this case.

7 A. Yes, sir.

8 Q. I'll be defining terms. Do you have any
9 philosophy or anything that would prevent you from accepting the
10 law from me and letting me tell you what it is?

11 A. No.

12 Q. You'd be willing to do that?

13 A. Yes.

14 Q. Do you know of anything that would prevent you
15 from being a fair and impartial juror to both sides in this
16 case?

17 A. No.

18 THE COURT: Counsel may inquire.

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1 VOIR DIRE EXAMINATION

2 BY MR. THOMAS:

3 Q Mr. Jacobs, if you felt that the evidence in this
4 case that was put on and that you considered proved beyond a
5 reasonable doubt that the defendant was guilty, you feel that
6 you could vote to convict him; even though the death penalty
7 might be mandatory for First Degree Murder conviction?

8 A I think so, yes.

9 Q And I take it that you would be able and willing to
10 concentrate on whether or not the evidence shows guilt or
11 innocence rather than considering the penalty?

12 A I think so, yes.

13 Q You understand from what the Judge has explained,
14 that the jury does not --

15 A Right.

16 Q -- is not concerned with the penalty in this case?

17 A Yes.

18 Q The jury just determines whether the defendant is
19 guilty or innocent of First Degree Murder.

20 A Yes.

21 Q Do you feel you can give the State, as well as the
22 defendant, a fair trial?

23 A I think so, yes.

24 Q Do you watch programs on television which
25 dramatize lawyers' work or courtroom activities?

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A. Yes.

Q. Do you have any feeling from having watched such programs that this particular trial should go the way programs do on television?

A. I don't know.

Q. You wouldn't be influenced by what you see on television?

A. No, I don't think so, no.

Q. If things happen differently in this courtroom?

A. No.

Q. Have you recently read any books or articles about law or lawyers?

A. No.

Q. Have you read any books about famous or well-known trials that have taken place?

A. No.

Q. In the trial of this case, Mr. Jacobs, the members of the jury have the duty to determine who they will believe if conflicting evidence comes from the witnesses. Do you think you'd have any problem with that?

A. I don't think so, no.

Q. Now, the Court has mentioned the reasonable doubt standard to you and indicated that in order to convict the defendant you have to find him guilty beyond a reasonable doubt. You don't believe that that means you have to find him guilty to

1 an absolute certainty, do you?

2 A. No, I don't think so, no.

3 Q. I think the Court will instruct you, if you serve
4 on the jury, that a reasonable doubt means just that; a doubt
5 that's reasonable and not just an imaginary doubt that anybody
6 can drum up.

7 If you are on the jury it will be up to you to
8 determine whether you are certain in your mind that the
9 defendant is guilty; that is, that the charges against him have
10 been proved beyond a reasonable doubt. Do you feel in your mind
11 any confusion about the difference between a reasonable doubt
12 and an imaginary doubt?

13 A. Yes, I do. What's a reasonable doubt?

14 Q. I think the Court will give you some instructions,
15 but what I'm trying to get at is, you understand that it's not
16 just any doubt that will acquit a defendant, it has to be
17 reasonable. You understand that?

18 A. Yes.

19 Q. And you understand that it is possible to create an
20 imaginary doubt?

21 A. Well, that's true, yes.

22 Q. Or a fanciful doubt and that's not what we're
23 talking about when we talk about reasonable doubt. Do you get
24 that distinction up to this point?

25 A. Yes.

1 Q The Court will give you more detailed instructions
2 at a later time.

3 We don't wish to pry into your personal affairs,
4 Mr. Jacobs, but there are a few questions we'd like to ask about
5 your background so we can get a little better idea of what your
6 background is. So, if you'd just bear with us for a moment or
7 two on this --

8 A Okay.

9 Q Where were you born?

10 A In Genesee, Idaho.

11 Q You've lived in Idaho since that time?

12 A Yes.

13 Q And what is your educational background?

14 A High school.

15 Q You have not gone to college?

16 A No, sir.

17 Q Taken any educational courses of any kind since
18 high school?

19 A No.

20 Q What's your religious preference?

21 A Lutheran.

22 Q And do you attend church on a fairly regular
23 basis?

24 A Yes, sir.

25 Q Do you have any grown children, Mr. Jacobs?

1 A. Yes, sir.

2 Q. What are their occupations?

3 A. Two of them are students, one works at Sunshine

4 Mining Company.

5 Q. What does he do there?

6 A. He's a superintendent, operator of the antimony

7 plant.

8 Q. Do you know any of the attorneys who appear in this

9 case?

10 A. No, sir.

11 Q. Do you know of any of your friends or relatives

12 that may know any of the attorneys who are participating in this

13 case?

14 A. Not that I know of.

15 Q. Do you know, or any of your family members or

16 close friends been in any legal difficulties; either in

17 criminal cases or in civil cases?

18 A. No, sir.

19 Q. Have you ever been a witness in a criminal case?

20 A. No, sir.

21 Q. Have you had any past jury experience?

22 A. Yes, sir.

23 Q. What kind of case was it that you --

24 A. It was a civil case.

25 Q. Was a civil case?

1 A. Yes.

2 Q. What was involved in that --

3 A. It was an automobile accident.

4 Q. Personal injury accident?

5 A. Yes.

6 Q. Who won?

7 A. Gosh, it's been so long ago I don't remember.

8 Q. Do you do any volunteer work of any kind?

9 A. No.

10 Q. If the evidence in the case demonstrated to you

11 that the victims were not nice people; that is, the people who

12 were killed, would that tend to make you feel that murder was

13 excused, or was less serious?

14 A. No.

15 Q. Have you ever discussed this case with anybody

16 who believed, or expressed an opinion, that the defendant was

17 either guilty or innocent?

18 A. No, sir.

19 MR. THOMAS: Thank you, Mr. Jacobs. Pass the juror for

20 cause.

21 MR. ROBINSON: If I may, Your Honor?

22 THE COURT: Yes.

23

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1 VOIR DIRE EXAMINATION

2 BY MR. ROBINSON:

3 Q Mr. Jacobs, have any members of your family,
4 relatives, close friends, ever been victims of crime?

5 A No, sir.

6 Q Do you believe in God?

7 A Yes, sir.

8 Q Do you believe that Satan exists?

9 A No, sir.

10 Q Have you heard any conversations you've had with
11 your fellow workers and family, anything about witchcraft being
12 performed here in the Silver Valley area?

13 A No, I haven't.

14 Q And, Mr. Jacobs, you know yourself better than
15 anyone in this courtroom knows you. In looking at your own
16 personality, do you know of anything in your personality, or
17 make-up, that you feel would disqualify you to sit as a juror
18 in this case?

19 A No.

20 MR. ROBINSON: Pass Mr. Jacobs, Your Honor.

21 THE COURT: All right, Mr. Jacobs, I'd ask you to step
22 back into the jury room and wait there and ask you not to
23 discuss the questioning that's taken place here with any of the
24 other members.

25 All right, the stand-by juror is number 41,

1 Edwin Helfer.

2 Draw another name.

3
4 EDWIN L. HELFER,
5 a prospective juror herein, having been first duly sworn, took
6 the stand and testified as follows:
7

8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q Mr. Helfer, I want to ask you a few questions first
11 then the attorneys will ask you a few. Everything we say here
12 has to be reported by the Court Reporter so if you will speak
13 loudly enough for him to hear you, please.

14 A Okay.

15 Q He can't get nods of the head so if you will answer
16 audibly each time a question is asked of you.

17 I want to visit with you first about the procedure
18 we'll follow then with the jury once the trial starts as far as
19 taking evidence and see if this is going to create any problem
20 for you if you were a juror.

21 Once we reach that point, the jury is completely
22 selected and we start receiving evidence, the jury will be what
23 we call sequestered; this means the jurors will not be able to
24 go home at recesses or in the evening, the jurors will be
25 housed in a motel, at the Stardust, the jurors will take their

1 meals at restaurants under the supervision of the Bailiffs and
2 this will continue throughout the trial until it's completed.

3 We don't know, any of us at this point, how long
4 the trial will actually take, but we estimate at about three
5 weeks and that's, probably, a reasonable estimate.

6 We need to know at this point whether there's
7 anything in your personal life, your home situation and your
8 work situation that would make it impossible for you to do this
9 or create an extreme hardship. We know it will be inconvenient
10 for all the jurors so we're not going to ask if it will be
11 inconvenient. We need to know if there's anything in your
12 particular situation that would make it a real serious problem
13 for you.

14 A Yes, it would, because I'm an agent and I have
15 nobody else to take my place in my office. My wife is only
16 taking my place while I'm doing this right now and it would
17 really, you know, make a hardship for me to do it.

18 Q What kind of an agent? What do you --

19 A I'm an insurance agent but I have nobody else, no
20 other help in my office to handle my work.

21 Q In other words, you are the sole proprietor? You
22 don't have any employees at all?

23 A Yes, I have my daughter only as a secretary is all.
24 I just virtually couldn't be away from the job for three weeks.

25 Q Is this because of -- what kind of daily activity?

1 Are you selling or --

2 A. Well, no, in handling claims and --

3 Q. Handling claims? You do all of that?

4 A. Right.

5 Q. You just don't have anybody that could do that in
6 the office?

7 A. Well, not to do the entire thing, no. Another
8 thing, I live at Prichard; which is 20 miles from here and my
9 wife doesn't drive and this provides a hardship too if I wasn't
10 around to take her home, back and forth, which my mother lives
11 with us and we have nobody to care for her too, so --

12 MR. ROBINSON: I'd stipulate, Your Honor.

13 MR. REMAKLUS: He may be excused.

14 THE COURT: All right, well, under those circumstances
15 we'll excuse you, Mr. Helfer, and we appreciate your problem and
16 thank you for the time you've spent here with us.

17 THE WITNESS: All right.

18 THE COURT: You will be subject to call on future trials,
19 perhaps shorter trials that won't involve this kind of a
20 problem. The Jury Commissioner will call you if you are needed.

21 THE WITNESS: All right. Thank you.

22 THE COURT: The next stand-by juror is number one,
23 Jerry Adams.

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JERRY R. ADAMS,

a prospective juror herein, having been first duly sworn, took the stand and testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q Mr. Adams, I want to ask you a few questions first and then the attorneys will have a few questions for you. Everything we say has to be reported by the Court Reporter here so if you will answer loudly enough for him to hear you and he can't get a nod of the head so if you'd answer audibly to each question.

A Right.

Q I want to spend a minute with you here visiting about the procedure we're going to follow with the jury once we select and start taking evidence in the trial. At that time we do what we call sequester the jury; which means the jurors won't be able to go home during recesses and are housed in a motel and take their meals at restaurants under the supervision of the Bailiffs. This will continue until the trial is over.

At this point none of us know for sure how long the trial will take. We estimate about three weeks and that's probably a reasonable estimate.

Now, understanding this procedure we need to know whether there's anything in your personal life, your home

1 situation or work situation that would make this impossible for
2 you to perform as a juror under these circumstances, or create
3 an extreme hardship. We can't talk about convenience because we
4 know it will be inconvenient for all jurors but we need to know
5 if there's anything that will be of a particular serious problem
6 for you in your own situation?

7 A. No.

8 Q. You think you could serve under those conditions,
9 then?

10 A. Yes.

11 Q. Fine. Turn to another subject, then, Mr. Adams.

12 Under our philosophy of law and system of justice,
13 a defendant in a criminal action is presumed to be innocent
14 until his guilt is established beyond a reasonable doubt and
15 the burden is on the State to prove his guilt beyond a
16 reasonable doubt. Now, those terms will be defined more fully
17 later in the trial when I give instructions to the jury. But,
18 for the present purposes, what it means is that the defendant
19 doesn't have to do anything to prove his innocence because the
20 law gives him the cloak of innocence at that stage of the
21 proceeding, see.

22 Now, of course, once the evidence is all in and
23 the case is concluded and instructions have been given to the
24 jury and the jury required to deliberate on its verdict, then
25 the jurors will have to weigh this evidence and make a decision

1 on guilt or innocence and decide whether the guilt has been
2 established beyond a reasonable doubt. But, at this point in the
3 trial before any evidence has been presented in court what this
4 principle means is that Mr. Creech, the defendant, has to be
5 considered innocent.

6 Now, are you able at this time to give him the
7 full benefit of this principle and consider him to be
8 innocent right now before you've heard anything about the case?

9 A. Yes.

10 Q Have you read or heard anything about this case
11 in the newspapers, on radio or TV or from individuals, other
12 than what you heard in court the other day?

13 A Just one article in the Kellogg Evening News that
14 the fact that the trial was coming up.

15 Q Coming up?

16 A Yes.

17 Q Can you tell me, as best you can remember, what,
18 if anything, any facts, were reported in that case about -- or
19 in that story about the case or about Mr. Creech?

20 A That he had been charged with First Degree Murder
21 of two people.

22 Q Anything else you remember about the story?

23 A No.

24 Q So, as far as you are concerned in your memory right
25 now the only purported facts you've heard about the case is what

1 you heard in court the other day that I explained and, then, a
2 news story that says he's charged with murdering two people?

3 A. That's right.

4 Q. And that the trial was coming up soon?

5 A. That's right.

6 Q. That's the extent of your -- what you've heard
7 about it?

8 A. Yes.

9 Q. Under our Idaho law, Mr. Adams, neither the Judge
10 nor the jury has any discretion as to the penalty to be imposed
11 for First Degree Murder.

12 A. What was that?

13 Q. Neither the jury nor the Judge has anything to say
14 about the penalty in First Degree Murder. The legislature has
15 passed a law, statute, that makes the death penalty mandatory.
16 In other words, the legislature has made that decision itself
17 and taken it completely away from the jury and the Judge to be
18 concerned about that.

19 What this means is that if you are on the jury the
20 only thing the jurors would be voting on is guilt or innocence
21 of the defendant of the charge, or lesser charge, and will not
22 be voting on the penalty. Likewise, the Judge won't have
23 anything to say about the penalty because that's already been
24 fixed by the legislature if the defendant were convicted of
25 the charge here, First Degree Murder.

1 Now, understanding this to be the law, do you have
2 any personal beliefs or feelings about the death penalty which
3 would prevent you from fairly considering the evidence and
4 weighing the evidence and the law on the issue of guilt or
5 innocence?

6 A. I believe that you'd have to make a real serious
7 effort to make sure that you made the right decision.

8 Q. Yes. We're assuming, of course, that you would
9 never find the defendant guilty unless the State proved that
10 beyond a reasonable doubt under the Court's instructions.

11 But, the question I'm putting to you right now
12 is if, in weighing the evidence, you felt that -- and in
13 considering the law, you felt the State had really done that,
14 would you hesitate, or be prevented from rendering a verdict
15 on that basis because of the penalty that you knew the
16 legislature had fixed for this?

17 A. No.

18 Q. You could render a verdict on the issue of guilt
19 or innocence, then?

20 A. Yes.

21 Q. Under our system of trials, the jury will be the
22 judge of the facts and the jury will weigh the evidence and
23 judge the credibility of witnesses. But, the Judge has to give
24 you the law. The Judge doesn't tell you anything about the
25 facts but that's purely up to the jury and completely within

1 their discretion. But, I have the duty of explaining the law
2 to the jury. The jury is supposed to accept the law from the
3 Court. Any reason why you couldn't do that?

4 A. No.

5 Q. Do you know of anything, whether I've asked you or
6 not, that would prevent you from being a fair and impartial
7 juror to both sides?

8 A. No.

9 THE COURT: I presume Counsel will want to pursue a
10 little questioning. I think we'll have to take our noon
11 recess at this time.

12 Mrs. Dumont, can you -- I guess we are getting
13 quite a crowd back there. You can stay right there, you'll
14 have to come back and take the same seat again when we start
15 at 1:30, if you would, please, and don't discuss this questioning
16 with other members of the panel during the recess.

17 You think you can get all of them in here?

18 MRS. DUMONT: I've got two rooms full, Your Honor.

19 THE COURT: Yeah, just have them come in and fill the
20 jury seats and then take seats back here.

21 (Whereupon the questioned prospective jurors
22 re-entered the courtroom.)

23 THE COURT: Just take whatever seats you can find.
24 The first thing, we're still not completed with the selection
25 of the jury, there are several pre-emptory challenges left, so

1 we'll still be going on this afternoon. I think we're going to
2 have to have two rooms overflowing as we keep adding jurors
3 so if those of you who were in this room, the nearest room here,
4 not back in the conference room, but in the nearest room, whoever
5 you were, we will ask you, after the noon recess, to come over
6 to the Courthouse and go into the jury room over there in the
7 Courthouse. I guess you all know who you are, whoever was in
8 this room next door here, if those jurors would report to the
9 jury room at the Courthouse after the noon recess. The rest
10 of you can go back to the same room you were in. I would,
11 again, remind you to just abide by the admonition I've given
12 at other recesses, don't discuss the case or listen to any
13 news reports or read anything or let anybody talk to you about
14 the case.

15 We'll be in recess until 1:30.

16 I think I'll have the Clerk draw one stand-by
17 juror to come back over here when we start after noon.

18 (Recess taken and following proceedings occurred
19 in the main courtroom at the County Courthouse.)

20 THE COURT: Well, just to bring you up to date, we
21 haven't gotten through, we've got about nine pre-emptories
22 left, so you will to come back after noon.

23 I will ask you to abide by the same admonition,
24 don't discuss the case or let anyone discuss the case with you,
25 don't listen to any radio news reports.

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We'll be in recess until 1:30.

(Noon recess taken.)

1 WALLACE, IDAHO, WEDNESDAY, OCTOBER 8, 1975, 1:30 P.M.

2
3
4 THE COURT: Ready to proceed?

5 MR. ROBINSON: Yes, Your Honor.

6 MR. REMAKLUS: Yes, Your Honor.

7 THE COURT: Mr. Adams is back on the stand.

8 Counsel may examine Mr. Adams.

9 MR. REMAKLUS: Thank you, Your Honor.

10
11 VOIR DIRE EXAMINATION

12 BY MR. REMAKLUS:

13 Q. How long have you been a fireman, Mr. Adams?

14 A. Seventeen years.

15 Q. Do you have a Fire Protection District up there?

16 Is that who you work for?

17 A. Yes.

18 Q. Your children are grown and gone, is that it?

19 A. I'm divorced.

20 Q. Oh, I see. What are the ages of your kids?

21 A. I have a daughter 18 and a daughter 15 and a
22 boy ten.

23 Q. Um-hmm. You have never been a juror before, have
24 you, Mr. Adams?

25 A. No.

1 Q And I assume you have not remarried, is that
2 right?
3 A That's right.
4 Q Do you have any hobbies, Mr. Adams?
5 A I do.
6 Q Would you tell me about them, please.
7 A I like to golf.
8 Q Um-hmm.
9 A I enjoy boating and some hunting.
10 Q Do you take some of the Spokane daily papers, or
11 the local papers?
12 A I do at the fire station.
13 Q Um-hmm. Do you watch television?
14 A At the fire station generally.
15 Q You haven't got any preconceived idea of lawsuits,
16 about watching some of the TV shows, are you?
17 A How is that?
18 Q You don't have any preconceived idea about
19 lawsuits after watching some of those television shows, do
20 you?
21 A No, not really.
22 Q You've made -- can make proper arrangements to
23 spend this time away from your work if you are selected?
24 A Yes.
25 MR. REMAKLUS: We'll pass the juror for cause, Your Honor

VOIR DIRE EXAMINATION

BY MR. ROBINSON:

Q. Mr. Adams, would you tell us what the extent of your formal education is?

A. High school.

Q. And what is your religious preference?

A. Protestant.

Q. Which denomination?

A. Lutheran.

Q. And are you a regular attender, or sporadic?

A. Sporadic.

Q. Do you work in church work at all?

A. At one time I was a member of the Board of the Lutheran Church, been about ten years ago.

Q. And how about other volunteer work? Do you do other volunteer work outside of your occupation as a fireman?

A. Like belong to organizations?

Q. Yes, um-hmm.

A. I do.

Q. What organizations are those?

A. I've been a member of the Chamber of Commerce for two years. I'm on the Board of Directors at the golf course.

Q. How about the Elks, Masons?

A. I belong to the Masons.

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Q. Do you believe in God?

A. I do.

Q. Do you believe that Satan exists?

A. I believe -- oh, yes.

Q. Mr. Adams, have you been involved in any conversations or heard any conversations regarding some witchcraft being practiced here in the Silver Valley, Shoshone County area?

A. No.

Q. Have you or any member of your family had any unfortunate occasion of running afoul of the law and being charged with any crimes --

A. No.

Q. -- excluding traffic citations, things of that nature?

A. No.

Q. Have any members of your close family, yourself or your good friends, relatives, ever been victims of a crime?

A. No.

Q. Do you know whether or not there is a John Birch Society chapter operating in this area?

A. No, I don't.

Q. Mr. Adams, you know yourself better than anyone in this courtroom knows you and you know your make-up and your

1 personality; is there anything, after you examined yourself
2 inwardly that you feel would disqualify you to sit as a juror
3 in this case?

4 A. No.

5 Q. You feel that you are an unbiased, unprejudiced
6 person and could afford a fair trial for the State and the
7 defendant if you are selected on the jury; is that correct?

8 A. Yes.

9 MR. ROBINSON: Pass Mr. Adams, Your Honor.

10 THE COURT: I'll ask you to step back in the jury room
11 and wait there, Mr. Adams. We appreciate your attention here
12 and please don't discuss the questions that's taken place with
13 other members of the panel that come in.

14 Defendant's sixth.

15 All right, the stand-by juror is number 53,
16 Bill E. James. I'll have the Clerk draw another name.

1 BILL E. JAMES,

2 a prospective juror herein, having been first duly sworn, took
3 the stand and testified as follows:

4
5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q. Mr. James, I want to ask you a few questions first
8 and then each attorney will want to ask you a few. Everything
9 we say here has to be taken down by the Court Reporter so if
10 you will answer loudly enough for him to hear you and he can't
11 take a nod so if you will answer audibly to all the questions,
12 please.

13 A. Okay.

14 Q. I want to visit with you just a few minutes about
15 the procedure we're going to follow in this case with the
16 jurors once we get into the actual trial, take the evidence and
17 the jury is completely selected. When we reach that point the
18 jury will be what we call sequestered; that means the jurors
19 won't be able to go home at recesses at night, we're going to
20 house the jury in a motel and make arrangements at the
21 Stardust Motel to do this. The jurors will take their meals
22 at restaurants under the supervision of the Bailiffs and this
23 will continue until the trial is over.

24 None of us know right now how long this trial
25 will last. We estimate, or guess, about three weeks and that's

1 probably a reasonable estimate.

2 The first thing we need to know is whether this
3 arrangement, method of handling the jury, will create any
4 impossible situation for you or extreme hardship. We know at
5 the outset it's going to be inconvenient for all the jurors
6 so we aren't asking in terms of convenience but if there's
7 something particularly in your situation which would just
8 make it impossible for you to handle we'd like to know about
9 it.

10 A. Well, it's going to be a hardship financially,
11 see, I've just bought a house and I also own another house
12 that -- well, I thought I'd have sold by that time and I've
13 had to draw all my money out of the bank and I'm a gypo miner
14 and if I'm working I can make it, you know, until I get
15 this other house. But, right at the present time I don't
16 know -- I don't know, it's --

17 Q. Do you have dependents you have to support?

18 A. I have five dependents, yes.

19 Q. Five dependents?

20 A. Five children plus my wife.

21 Q. Is she working?

22 A. No. We have children at home, still small ones,
23 so --

24 Q. I'm not that familiar with mining. How do you
25 actually make your money at gypo mining, what -- mine her and

1 sell it, is that what you do?

2 A. Well, no. I work at the Bunker Hill, it's just
3 the more work -- the more footage you advance per day the
4 more you get paid.

5 Q. You get paid on the basis of what you --

6 A. I'm not -- don't get just a regular day's pay.

7 Q. So, you are on a salary, then?

8 A. No, just how much work I do.

9 Q. Apparently Bunker Hill has an arrangement for
10 salaried employees so they make up the difference what they
11 lose by being on jury duty. Do they have any kind of
12 arrangement like that with you?

13 A. Not -- I really don't know. I don't know. I
14 haven't been able to get out of here in time to find out.

15 Q. I see.

16 A. But, I don't think they would make up the
17 difference with the gypo. But, they are a good company, but
18 I don't think they're that good. I don't think they'd do
19 that, no.

20 Q. Is there -- what will be the situation if they
21 don't -- if you lose your entire salary during this period,
22 will you actually lose the house do you think?

23 A. Well, I don't know how much the loan would go on
24 that. I've got borrowed money on one house from the Small
25 Business Administration. I don't know how much they give a

1 person and the other one I've -- well, like I say, I've drawed
2 my money out of the bank to make the down payment.

3 Q Have you left your family without any finances
4 at all, then?

5 A Well, we're down approximately to about \$500 in
6 the bank still.

7 Q Um-hmm.

8 A So, if this went very long I don't -- I don't
9 know right at the present time with my normal business plus
10 the two house payments my bills are running about \$500 a
11 month, that's just straight bills, not for food and clothing
12 and so forth.

13 Q Is there any way, if we gave you a little while,
14 that you could find out whether Bunker Hill makes any
15 arrangement for your particular occupation, to make up what
16 you lose in jury service?

17 A I suppose I could call. I don't know. One guy
18 told me that they would make up the day's pay difference.

19 Q That's what we've been told by other jurors.

20 A But, as far as the contract goes, I don't -- they
21 might, but it doesn't stand to reason that they would. I
22 don't really know.

23 THE COURT: What would Counsel want to do? You want
24 us to have him check?

25 MR. ROBINSON: I would imagine his union representative

1 should be able to answer that question, Your Honor.

2 MR. REMAKLUS: I would like to have Mr. James find out
3 what his financial position would be.

4 THE COURT: Could you call your union representative
5 and see what arrangements they could make? We'll give you a
6 few minutes to do that, then.

7 Do you have a phone he could use?

8 Why don't you go in and grab the phone.

9 (Brief delay.)

10 THE WITNESS: According to the union hall, they do
11 make up the difference, so --

12 THE COURT: I see.

13 THE WITNESS: According to her they make up the
14 difference in the contract.

15 Q. BY THE COURT: So, you could function, then, on
16 that basis?

17 A. Um-hmm.

18 Q. Turning to another matter, Mr. James.

19 Under our system of justice and philosophy of
20 criminal law, a defendant in a criminal action is presumed to
21 be innocent until his guilt is established beyond a reasonable
22 doubt. That puts the burden on the State to prove him guilty
23 beyond a reasonable doubt. Now, these terms will be defined
24 further in the trial in written instructions. But, for the
25 present purposes what this means is that a defendant doesn't

1 have to do anything to prove his innocence. The entire burden
2 is on the State to go forward with the evidence and prove the
3 defendant is guilty and that has to be proved beyond a
4 reasonable doubt.

5 Of course, once all the evidence is in and you've
6 had the instructions of the Court and the case is fully
7 submitted then it will be the function of the jurors to weigh
8 that evidence and decide whether this has been proven up to
9 that standard of beyond a reasonable doubt and then the jurors
10 would decide guilt or innocence on that basis.

11 But, it means that right now, before you've
12 heard any evidence that at this stage of the trial Mr. Creech,
13 the defendant, must be considered innocent under that
14 philosophy and rule.

15 Are you able at this time to give Mr. Creech the
16 full benefit of this principle and consider him to be
17 innocent at this stage of the proceeding?

18 A. Well, I don't know. I heard one bit of
19 information that would -- it might kind of make it hard.

20 Q. Okay. Why don't you tell me what that was that
21 you heard.

22 A. Well, I heard that the girl is already serving
23 a couple of years for an accomplice.

24 Q. I see. Do you feel that -- well, let's go into
25 that a little further, Mr. James.

1 Have you heard anything else about it other than
2 that one thing?

3 A. Well, I know that there was supposed to have been
4 a couple more in Oregon.

5 Q. A couple more in Oregon?

6 A. Yes.

7 Q. Anything else you heard, purported facts about
8 Mr. Creech, about the case?

9 A. No.

10 Q. So, you've heard that a girl that was with him
11 is already serving time and there were a couple of other
12 incidents in Oregon?

13 A. Yeah.

14 Q. Do you feel that this -- these facts that you
15 have heard would make it difficult to give him the benefit
16 of the presumption of innocence, then, right now?

17 A. Well, I don't know. If the girl has already
18 pleaded guilty to being an accessory that would put me in
19 quite --

20 Q. You do understand that that was a separate
21 proceeding and, of course, has really no bearing on this --
22 on this case as far as the law is concerned. Mr. Creech's
23 case has to be -- stand and be decided on evidence that's
24 presented right here in this court in this trial and his
25 guilt or innocence can't be decided -- based on what's happened

1 to somebody else even if it would appear from news reports
2 and things to be connected.

3 A. Well, I understand that, yes.

4 Q. You understand that?

5 A. But --

6 Q. What we want to know is what effect this has had
7 on your mind; understanding what the principles are, do you
8 feel you have formed an unqualified opinion at this time
9 as to the guilt or innocence of the defendant, based on these
10 things you heard?

11 A. Well, like I said, it was -- I understand she
12 was supposed to have been with him so it looks like if she
13 pleaded innocent then it must have been -- or guilty, so
14 there must have been quite a bit to it.

15 Q. Do you feel with that present state of mind that
16 it would require Mr. Creech to come forward with some
17 evidence to prove he wasn't in you rather than the State
18 having the full burden of proving him guilty?

19 A. I'm afraid I'd have to look at it that way.

20 MR. ROBINSON: Challenge, Your Honor.

21 THE COURT: Want to resist the challenge?

22 MR. THOMAS: Yes, Your Honor.

23 THE COURT: Do you want to question?

24 MR. THOMAS: Yes.
25

VOIR DIRE EXAMINATION

BY MR. THOMAS:

Q. Mr. James, you feel that you could come into this courtroom and sit down and listen to all the evidence that was presented and make up your mind on the basis of that evidence instead of anything you heard from outside the courtroom about whether this defendant is guilty or innocent?

A. Well, I don't know. I would really -- I don't know because all I'll hear, well, it is like your side of it, you know.

Q. What side of it have you heard? Have you heard anything besides what you told the Judge?

A. No.

Q. On the basis of the few articles you have heard, do you feel that you would not be able to make your judgment solely based on the evidence you hear in the courtroom?

A. Well, bad habit, usually I make a decision, I have a bad habit of sticking with it, so I don't know. I might be able to.

Q. You might be able to? You say you have made a decision about the defendant's guilt, or you are just thinking about it?

A. Well, like I said, the girl friend, I assume that's what it was, pleaded guilty to accessory and that -- and they convicted her, so.

1 Q You do not believe that you would be able to
2 set that feeling aside with the purpose of looking at the
3 evidence in this case?

4 A I believe it would always be there, the idea.

5 Q Of course, I'm not asking whether you could
6 forget about it or not. The only thing I'm asking you is
7 whether or not you feel that you could refrain from drawing
8 any conclusions from what you know about whether this
9 defendant is guilty until after you've heard all the evidence
10 in this case.

11 Do you think you could do that?

12 A I think it would be awful hard.

13 Q It would be hard?

14 A I don't know whether I could or not.

15 Q Are you telling us that you feel that no matter
16 what, you don't think you could give the defendant a fair
17 trial on the charges he's facing in this case?

18 A No, I don't think so.

19 MR. THOMAS: Well, we do not resist the challenge,
20 Your Honor.

21 THE COURT: All right. We'll excuse you, then,
22 Mr. James. We appreciate your time you spent here and you
23 will be subject to call on other cases if they need you. The
24 Jury Commissioner will contact you if you are needed on some
25 other case.

1 You may be excused at this time.
2 All right, the next stand-by juror is number 36,
3 Linda Gust.
4 I'll have the Clerk draw another name.

5
6 LINDA L. GUST,
7 a prospective juror herein, having been first duly sworn, took
8 the stand and testified as follows:

9
10 VOIR DIRE EXAMINATION

11 BY THE COURT:

12 Q Mrs. Gust, I want to ask you a few questions
13 first and then the attorneys would each ask you a few.
14 Everything that's said here has to be taken down by the
15 Court Reporter sitting here (indicating) so you will have to
16 answer loudly enough for him to hear you and he can't take
17 down a nod so if you will answer audibly to each question,
18 please.

19 I just want to spend a few minutes visiting with
20 you first about the procedure we'll follow with the jurors
21 once the trial starts as far as receiving evidence and see
22 if that's going to create some problems for you.

23 Once we reach that stage and the jury is
24 completely selected and start receiving evidence the jury
25 will be what we call sequestered; which means they couldn't

1 go home during recesses or during the evening. They will be
2 housed at a motel, made arrangements at the Stardust for that,
3 and they'll take the meals together in the restaurants under
4 the supervision of the Bailiffs. This will go on until the
5 trial is over.

6 Right now none of us know for sure how long this
7 trial will last. The estimate is about three weeks and I
8 think that's, probably, a reasonable estimate.

9 Bearing that in mind, is there anything in your
10 personal life, your home situation or work, if you work, that
11 would make this impossible for you, or create an extreme
12 hardship? We know it's going to be inconvenient for all the
13 jurors so we are not going to ask in terms of convenience,
14 but just if there is some special other problem you feel you
15 have in your situation that would just make this extremely
16 difficult for you to handle?

17 A. No, I guess not.

18 Q. You could serve under those circumstances?

19 A. I suppose.

20 Q. Turn to another subject, then.

21 Under our system of justice and philosophy of
22 criminal law a defendant is presumed to be innocent until
23 his guilt is established beyond a reasonable doubt and this
24 principle places the burden on the State to come forward with
25 evidence and prove him guilty beyond a reasonable doubt.

1 Now, what -- these terms will be defined more
2 fully later on in the trial and give written instructions
3 to the jury. For the present purpose, what it means at this
4 stage is that the defendant doesn't have an obligation to
5 come forward with any evidence or do anything to prove he's
6 innocent.

7 In other words, the law cloaks him with this
8 presumption of innocence and that shifts the whole burden on
9 the State to prove him guilty beyond a reasonable doubt.

10 Of course, after all the evidence has been
11 presented and the case is fully submitted and I've
12 instructed the jury on the law then the jury will have to
13 weigh the evidence under the instructions of the Court and
14 make a decision on guilt or innocence under that standard,
15 beyond a reasonable doubt.

16 Right now, as we sit here in court, without any
17 evidence having been presented, this principle I have
18 explained to you requires that Mr. Creech be considered
19 innocent. Now, is there anything that would prevent you from
20 giving him the full benefits of this principle and in
21 considering him innocent right now?

22 A. No, there isn't.

23 Q. Have you read or heard anything about his case
24 in the newspapers or on the radio or TV or from any person
25 other than what I have told you in court the other morning?

1 A. The only thing I read was before this trial
2 started, the little piece of paper in Kellogg News and all
3 it said was what you told us.

4 Q. You can't remember any other facts that were
5 in that story; other than what I told you the other morning?

6 A. I cannot.

7 Q. I want to discuss -- well, let me touch on
8 one other aspect. Apart from the news reports, have you had
9 any conversations with any individuals that have told you
10 what purported to be facts about the case, or about
11 Mr. Creech?

12 A. No, I haven't.

13 Q. I want to discuss one other proposition of law
14 that I found a lot of jurors didn't know about and comes as
15 somewhat of a surprise to them.

16 Under our Idaho law, neither the jury nor the
17 Judge has any discretion in fixing the penalty for First
18 Degree Murder. Our legislature has passed a law that makes
19 the death penalty mandatory for defendants who are convicted
20 of First Degree Murder.

21 In other words, the legislature has made this
22 decision and taken it completely out of the hands of the
23 jury and the Judge. We just don't have any say about it.
24 So, all the jury will be voting on is guilt or innocence
25 under the instructions of the Court and the Judge doesn't

1 have any discretion either.

2 Now, with this knowledge that the law imposes
3 the mandatory death sentence if a defendant is convicted of
4 First Degree Murder, would that prevent you from fairly
5 considering the evidence and law bearing on that charge of
6 First Degree Murder? In other words, would that interfere
7 with you deciding the issue of guilt or innocence which would
8 be the only issue submitted to the jury?

9 A. No.

10 Q. Okay. The function of the jury in a case like
11 this is to decide the facts and that includes weighing
12 the credibility of witnesses, deciding how much weight to be
13 given to testimony of witnesses and the evidence presented.

14 The function of the Judge is not to tell the jury
15 anything about the facts but to instruct the jury on the law
16 in the case. Occasionally I think when a Judge gives juries
17 instructions, individual jurors might find a particular
18 instruction they disagree with, or wouldn't think is good law
19 or maybe they'll find some law they didn't know was the law.

20 Anything that would prevent you from accepting
21 the full instructions I would give you as to the law?

22 A. No.

23 Q. Do you know of anything that would prevent you
24 from being a fair and impartial juror to both sides in this
25 case?

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A. No.

THE COURT: Counsel may inquire.

MR. THOMAS: Thank you, Your Honor.

VOIR DIRE EXAMINATION

BY MR. THOMAS:

Q Mrs. Gust, if you felt that the evidence in this case proved First Degree Murder beyond a reasonable doubt, could you honestly say that you would be able to vote to convict even though you knew the death penalty would be mandatory on a conviction of First Degree Murder?

A. Yes.

Q You would, then, be willing and able to concentrate on the issue of whether the defendant is guilty or innocent and not concern yourself with the penalty; is that correct?

A. Yes.

Q And you do understand that the jury does not have the responsibility for the penalty but only has the responsibility for deciding guilt or innocence?

A. Yes.

Q Do you feel, looking inward at your own state of mind that you could give the State as well as the defendant a fair trial?

A. Yes.

1 Q Do you watch any programs on television,
2 Mrs. Gust, that dramatize the work of lawyers or trials in
3 courtrooms?

4 A No.

5 Q Have you seen programs like Kate McShane and
6 Petrocelli?

7 A I suppose I've seen them, yes. I don't usually
8 watch them.

9 Q Have you gotten any impression from watching
10 those programs as to what ought to happen in the courtroom
11 during a trial?

12 A Yes.

13 Q If things were different here during this trial,
14 would that influence you to think that there was something
15 wrong in this case?

16 A No.

17 Q You understand that those are dramatizations
18 and the way things work here may be considerably different?

19 A Yes.

20 Q Have you recently read any books or articles
21 about law or lawyers?

22 A No.

23 Q Have you read anything recently about famous
24 trials or famous criminal cases?

25 A No.

1 Q You understand that if you are a member of the
2 jury, that the jurors are the judges of the believability of
3 the witnesses who come into this court and that if
4 conflicting testimony is presented to the jury, the jury
5 makes the determination of who to believe. You understand
6 that?

7 A Yes.

8 Q Would you have any problems with that?

9 A No.

10 Q The Court has mentioned to you the reasonable
11 doubt standard. You don't believe that reasonable doubt means
12 that the State has to prove beyond all shadow of a doubt the
13 defendant is guilty, do you?

14 A Well, yes, I think I do.

15 Q What is your conception of reasonable doubt?
16 What do you think that means?

17 THE COURT: I don't think that's a proper question,
18 Mr. Thomas. She's said she will follow the instructions
19 of the Court on that subject and I don't think it's really --
20 if she has an erroneous belief, she's said she will follow
21 what the Court tells her and I think that's all that counts.

22 Q BY MR. THOMAS: Mrs. Gust, I think the Court
23 will probably instruct you that there's a difference between
24 a reasonable doubt and an imaginary doubt, or a fanciful
25 doubt. As a juror it would be up to you to determine whether

1 or not you are certain in your mind the defendant is guilty
2 beyond reasonable doubt; that is, that the charges have been
3 proved beyond a reasonable doubt.

4 Do you feel that you could adequately distinguish
5 in your own mind between a reasonable doubt and a fanciful
6 doubt?

7 A. Yes.

8 Q. We don't wish to pry into your personal affairs,
9 but I hope you bear with us because we do have to ask a
10 few background questions to get an idea about you.

11 Where were you born, Mrs. Gust?

12 A. Kellogg.

13 Q. Kellogg? And have you lived there all of your
14 life?

15 A. All but a few months of my life, yes.

16 Q. And what is your educational background?

17 A. High school.

18 Q. And your religious preference?

19 A. Protestant.

20 Q. Do you attend church regularly?

21 A. No.

22 Q. You have several children; is that correct?

23 A. Yes.

24 Q. What are their ages? Could you tell me that?

25 A. Eleven, ten, seven and six.

1 Q Do you know any of the attorneys in this case?

2 A No, I don't.

3 Q Do you know whether or not any of your close
4 friends or relatives are acquainted or associated with any
5 of the attorneys in this case?

6 A No, I don't.

7 Q Have you or any members of your family had any
8 legal troubles in either criminal or civil lawsuits?

9 A No.

10 Q Have you ever been a witness in a criminal
11 case?

12 A No.

13 Q Do you have any previous jury experience?

14 A No.

15 Q Do you do any volunteer work?

16 A No.

17 Q If the evidence in the case revealed that the
18 victims, the people who were killed, were bad people, would
19 that tend to make you believe that murder was justified, or
20 in any way less serious?

21 A No.

22 Q Have you ever discussed this case with anybody
23 who expressed an opinion that the defendant was either guilty
24 or not guilty?

25 A I've not really discussed it. I've heard

1 people say one way or another, but I haven't discussed the
2 case.

3 Q Have you formulated any opinion of your own,
4 based on what you've heard?

5 A No, I haven't.

6 MR. THOMAS: Pass the juror for cause, Your Honor.
7

8 VOIR DIRE EXAMINATION

9 BY MR. ROBINSON:

10 Q Mrs. Gust, have any of your close friends,
11 relatives, family, been a victim of any crime committed against
12 them?

13 A No.

14 Q What denomination of the Protestant religion do
15 you belong to?

16 A Nazarene.

17 Q Do you believe in God?

18 A Yes, I do.

19 Q Do you believe that Satan exists?

20 A Yes, I do.

21 MR. ROBINSON: Pass this juror for cause, Your Honor.

22 THE COURT: Mrs. Gust, we will ask you to step back in
23 the jury room and wait for further instructions and ask you not
24 to discuss the questioning that's taken place here with other
25 members of the panel as they come in, please.

1 THE WITNESS: Okay.

2 THE COURT: State's seventh.

3 I was just handed a note that Juror No. 83 had a
4 doctor's appointment previously and was advised to return again
5 today. Do Counsel object to excusing that juror?

6 MR. THOMAS: No.

7 MR. ROBINSON: Not a selected juror; is that correct,
8 Your Honor?

9 THE COURT: Hasn't been drawn.

10 MR. ROBINSON: No objection, Your Honor.

11 THE COURT: Any objection?

12 MR. REMAKLUS: No, Your Honor.

13 THE COURT: The stand-by juror is number 20,
14 Donald Crawford.

15 I'll ask the Clerk to draw another name.

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1 DONALD A. CRAWFORD,
2 a prospective juror herein, having been first duly sworn, took
3 the stand and testified as follows:

4
5 VOIR DIRE EXAMINATION
6 BY THE COURT:

7 Q Mr. Crawford, I want to ask you a few questions
8 first and then each attorney will ask you some questions.
9 Everything we say here has to be reported by the Court Reporter
10 sitting right here (indicating) so it will be necessary for you
11 to answer loudly enough for him to hear you and he can't take
12 down a nod, so if you will answer audibly to all the questions
13 that are asked, okay?

14 A. Yeah.

15 Q I want to visit with you just a minute about the
16 procedure we'll follow when once the jury is selected and we
17 start the actual trial as far as receiving evidence, to see
18 whether that's going to create any problem for you if you were
19 selected to serve.

20 When we reach that point the jury will be what
21 we call sequestered, which means the jurors won't be able to
22 go home at recesses or in the evening, we'll house the jurors
23 in a motel and arrangements have been made at the Stardust.
24 The jurors also will take their meals at restaurants under
25 the supervision of the Bailiffs and this will continue until the

1 trial ends.

2 Right now we don't know how long the trial will
3 last, none of us do. But, an estimate is about three weeks and
4 that's, probably, a reasonable estimate.

5 Bearing this procedure in mind, is there anything
6 in your personal life or your home situation, work situation,
7 that would make it impossible for you to serve under these
8 conditions, or create an extreme hardship for you?

9 I use those terms because we know at the outset
10 it's going to be inconvenient for all jurors so we're not going
11 to ask in terms of convenience but in terms of whether there's
12 some particular problem in your situation that would just make
13 this a real serious burden?

14 A. No.

15 Q. You can serve under those circumstances?

16 A. Yes. There wouldn't be any more than anybody else
17 would have.

18 Q. All right. That's fine.

19 Turn to another principle, then, that I want to
20 discuss with you. Under our system of justice and philosophy
21 of criminal law, a defendant in a criminal action is presumed to
22 be innocent until his guilt is proved beyond a reasonable doubt
23 and this places the burden on the State to do this, to go forward
24 with the evidence and prove guilt beyond a reasonable doubt.

25 These terms will be given to you in more detail

1 later in the trial and written instructions, but for the present
2 purposes what it means is that the defendant doesn't have to do
3 anything to prove his innocence. Our system places the burden
4 the other way, on the State to prove guilt. This means that
5 right now at this stage of the proceeding, before any evidence
6 has been presented, Mr. Creech, the defendant, must be
7 considered innocent. Of course, you understand that when the
8 evidence comes in, the case is fully submitted, the
9 instructions have been given as to the law to the jury, then the
10 jurors will have to weigh that evidence and decide the issue of
11 guilt or innocence based on the evidence and instructions by
12 the Court and decide whether the State has met its burden of
13 proving guilt beyond a reasonable doubt.

14 Right now, before we add any evidence and sit here
15 in the court today, Mr. Creech must be considered innocent.

16 Is there any reason right now why you couldn't
17 give Mr. Creech the full benefit of this principle and
18 consider him innocent?

19 A. None that I can think of.

20 Q. Have you read or heard anything about this case in
21 the newspapers or on radio or TV or from individual gossip and
22 individual conversations?

23 A. Outside of when I got my summons there was
24 speculations as to which case I might be involved in.

25 Q. I see.

1 A. No detail other than that. Somebody would say
2 "lawsuit" or, you know, something to that effect.

3 Q. You haven't heard, other than what you heard in
4 court the other day when I outlined the nature of the charge,
5 other than that statement I made, you are saying, then, that
6 you haven't heard anything that purports to be facts about
7 this case or about Mr. Creech, then?

8 A. I didn't even know about the case until Monday.

9 Q. So, you don't -- you knew there was a case but
10 not even what case it was; is that correct?

11 A. Yes.

12 Q. And now that you've found out what case it is, you
13 haven't heard any purported facts about it?

14 A. No.

15 Q. Turn to a different subject, then, Mr. Crawford.

16 Under our Idaho law neither the jury nor the Judge
17 has any discretion in fixing the penalty for First Degree
18 Murder. The legislature has removed that from the jury's
19 and Judge's hands and the statute that has passed -- in that
20 statute the legislature chose to make the death penalty
21 mandatory in First Degree Murder.

22 Now, this means that the jury will not be voting
23 on the penalty, the Judge won't. I wouldn't have anything to
24 say about the penalty if there's a First Degree Murder
25 conviction.

1 Now, will this knowledge --- well, let me put it
2 this way: Do you have any personal beliefs or feelings about
3 the death penalty knowing that if there is a conviction of
4 First Degree Murder it would follow automatically? Do you have
5 any personal beliefs or feelings that would interfere, or
6 prevent you from fairly considering the issue of guilt or
7 innocence?

8 A. Not to that extent, no.

9 Q. In other words, -- could you at least set this
10 knowledge aside and determine solely the issue of guilt or
11 innocence based on the evidence and instructions of the Court?

12 A. Yes.

13 Q. It's the function of the jury in a trial like this,
14 Mr. Crawford, to decide the facts and weigh the credibility
15 of witnesses and how much weight to be given to their testimony
16 or other evidence that's presented. The Judge doesn't have
17 anything to do with that.

18 The Judge has the function of instructing the jury
19 on the law to be applied in the case, nothing about the facts.
20 Occasionally I'm sure jurors find that the law is different than
21 they thought it would be, or sometimes, perhaps, they even think
22 that the law was incorrect or should be different, the law that
23 I give them.

24 Now, if you find that you had a different
25 impression of the law or that it's different than you thought

1 it was, would you still be willing to follow my instructions
2 on the law?

3 A. Yes.

4 Q Do you know of anything that would prevent you from
5 being fair and impartial to both sides in this case?

6 A. No.

7 THE COURT: Counsel may examine.

8
9 VOIR DIRE EXAMINATION

10 BY MR. THOMAS:

11 Q Mr. Crawford, if you felt after hearing all of the
12 evidence in this case about --, and that evidence proved beyond
13 a reasonable doubt in your mind that the defendant was guilty
14 of First Degree Murder, would you genuinely say that you could
15 vote to convict him even though you knew that the death penalty
16 was mandatory for conviction of First Degree Murder?

17 A. My decision would be just guilty or not guilty;
18 wouldn't it?

19 Q Yes. Do you have any problem with that?

20 A. No.

21 Q So, you'd be willing to concentrate on that issue
22 and not consider the penalty?

23 A. Yes.

24 Q Do you feel, Mr. Crawford, that you'd give the
25 State, as well as the defendant, a fair trial in this case?

1 A. Yes.

2 Q Do you watch any programs on television that
3 dramatize lawyers' work or the work in courtrooms?

4 A. Oh, yes.

5 Q Have you gotten any impression from any of those
6 programs about how things ought to go here?

7 A. Not really.

8 Q Do you think that your watching those programs gives
9 you any preconception that might interfere with your objective
10 consideration of the evidence in this case?

11 A. Preconception? Now, what do you mean?

12 Q Do you have any ideas, based on what you --
13 watching those programs, that might distract you from
14 considering the evidence?

15 A. No, I don't believe I would.

16 Q You would not be disappointed if this trial doesn't
17 work the same way as trials on television?

18 A. No, I wouldn't be disappointed at all.

19 Q Have you recently read any books or articles about
20 law or lawyers?

21 A. No.

22 Q Have you read any books or articles recently
23 about well-known trials or legal cases?

24 A. No.

25 Q You do understand, do you not, that as a juror you

1 would be the judge of whether the witnesses who testify are
2 believable in the case of conflicting testimony?

3 A. Yes.

4 Q. Would you have any problem with that so far as you
5 know?

6 A. Not that I can foresee.

7 Q. The Judge has mentioned to you the reasonable
8 doubt standard and I believe the Court will probably instruct
9 you that a reasonable doubt does not mean a fanciful doubt,
10 it means just that; a reasonable doubt. And you have to
11 determine that the defendant is guilty beyond a reasonable
12 doubt in order to convict him.

13 As a juror it would be up to you to determine
14 whether or not you are satisfied in your own mind that the
15 charges against the defendant have been proved beyond a
16 reasonable doubt. Do you feel any confusion about the difference
17 between a genuine reasonable doubt and a fanciful or imaginary
18 doubt?

19 A. That's a hard one to answer. Beyond a reasonable
20 doubt to me would be what it would take for me to give a
21 complete decision.

22 Q. Would you require the State to prove beyond -- to
23 an absolute certainty the charges?

24 A. Yes.

25 Q. If the Court instructed you differently and told

1 you that we don't have to prove the charges to an absolute
2 certainty but to only beyond a reasonable doubt, would you
3 follow the Court's instructions or your own inclination and
4 believe that we have to prove the charges beyond all doubt?

5 A. Well, now, I wouldn't be bound to follow this
6 instruction by the Court, would I? Is that what you are
7 saying?

8 Q. Yes.

9 A. I'm bound to?

10 Q. Would you follow the Court's instructions or would
11 you require us to prove the charges to an absolute certainty?

12 A. I would require you to prove it to an absolute
13 certainty.

14 MR. THOMAS: Challenge for cause, Your Honor.

15 MR. ROBINSON: We would resist, Your Honor. I think
16 there's a misunderstanding.

17 THE COURT: Just let me -- this is the point I was
18 getting at, Mr. Crawford, about following the instructions
19 the Court gave you. I'm sure this concept of reasonable doubt
20 is a difficult one, it's a difficult one for the Court to
21 instruct on but still the law has it defined, this term, and
22 set it out and I will intend, when the appropriate time comes,
23 to give you a definition of reasonable doubt and define that
24 term for the jury.

25 Now, this is a principle of law and not a

1 question of fact and, as I told you before, the jurors in their
2 oaths are required to accept the law from the Court and this is
3 what I meant when I asked you whether you could wholeheartedly
4 accept that principle. As I say, whereas the Judge can't
5 interfere with the juror's findings what the facts are, neither
6 can the jury replace the Court in deciding what the law is.
7 You see what I'm saying?

8 THE WITNESS: Yeah, I think so.

9 THE COURT: And since this definition of reasonable
10 doubt is a question of law, not of fact, it's up to the Court
11 to give the instruction on that and I will tell you that you
12 will be bound as a juror under your oath to accept the law as
13 I give it to you; including my definition of reasonable doubt.

14 Now, I perhaps didn't explain that fully enough
15 before when we were going over this, but do you think you can,
16 in good conscience, accept my definition even if it's a little
17 different than you thought it was?

18 THE WITNESS: Excuse me, I think I'm misunderstanding
19 you, now, by reasonable doubt. Is there set guidelines for
20 this?

21 THE COURT: Well, I'm not going to tell you that you
22 won't have any questions after you read the instruction because
23 I think it's a hard concept to put into words. But, yes, there
24 will be -- I have a fixed instruction that I will give you to
25 define that term and you are bound by your oath to accept that

1 definition and apply it as best you can. All we can ask you
2 now is whether you will do that and do your best to interpret
3 that instruction and to follow it.

4 THE WITNESS: Well, I'd be bound to follow the Court's
5 instructions provided that I know what they are.

6 THE COURT: Right, and they will be given to you in
7 writing. You see, they'll all be written down and at that
8 time the Court will read those instructions and then the jury
9 will actually be given a copy of them and be able to take
10 them into the jury room so you can read them. In those
11 instructions will be an instruction on the burden of beyond a
12 reasonable doubt that the State is faced with and that term
13 will be defined. I'm not going to tell you that you might not
14 be disappointed and I think it isn't just as clear as it could
15 be. But, at least it will be a definition that you can try to
16 follow and apply and all we can ask is that you try to follow
17 that definition and apply it; whether you are willing to do
18 that. Will you be willing to do that?

19 THE WITNESS: Yes, yes.

20 THE COURT: I think the juror misunderstood.

21 MR. THOMAS: Excuse me, Mr. Crawford, perhaps I
22 misunderstood your answer.

23 THE COURT: Probably the Court's fault too in not
24 explaining it fully.

25 Q BY MR. THOMAS: Do you recognize, anyway, that

1 there's a difference between proof beyond a reasonable doubt
2 and proof to an absolute certainty?

3 A. Yes.

4 Q. You are willing, as I understand it now, to follow
5 the Court's instructions on the question?

6 A. Yes.

7 Q. We don't wish to pry unnecessarily into your
8 personal affairs, I hope you will bear with me just a moment
9 while I ask you a couple of questions about your background so
10 that we can get a better idea about you as a juror.

11 Could you tell me where you were born,
12 Mr. Crawford?

13 A. In Kellogg.

14 Q. Have you lived there all your life?

15 A. Except for nine months when I was sent to school
16 down in Southern California.

17 Q. That was the next question I was going to ask, is
18 about your educational background. Where did you go to school
19 and what did you study?

20 A. Southwestern Junior College and I had two classes
21 of general education and that was the extent of it.

22 Q. Do you have a religious preference?

23 A. Not really.

24 Q. You do not, I take it, attend church on a regular
25 basis?

1 A. No.

2 Q. Do you know any of the attorneys who are
3 participating in this case?

4 A. No.

5 Q. Do you know whether any of your close friends or
6 relatives are acquainted, or associated, with any of the
7 attorneys in the case?

8 A. I have no idea.

9 Q. Have you -- you or any close friends or relatives
10 been involved in any legal difficulties in either criminal or
11 civil cases?

12 A. By "civil cases" what do you mean?

13 Q. Lawsuits for damages, things like that?

14 A. No, not that I know of.

15 Q. Have you ever been a witness in a criminal case?

16 A. No.

17 Q. Have you had previous jury experience?

18 A. No.

19 Q. Do you do any volunteer work of any kind?

20 A. Not regular enough to amount to anything.

21 Q. Now, if the evidence in this case should reveal
22 that the victims of this crime that is charged here were not
23 nice people, would that tend to make you believe that murder
24 was either excused or was in any way less serious?

25 A. You mean as to the degree?

1 Q Yes.

2 A. No.

3 Q It wouldn't make any difference about the victims
4 to you, then, if all of the elements of murder in the first
5 degree were proved to you beyond a reasonable doubt?

6 A. No, it wouldn't make any difference.

7 Q Have you ever discussed this case with anyone,
8 you expressed an opinion about whether the defendant was
9 either guilty or not guilty?

10 A. No.

11 MR. THOMAS: Pass for cause, Your Honor.

12 MR. ROBINSON: May I proceed, Your Honor?

13 THE COURT: Yes.

14

15 VOIR DIRE EXAMINATION

16 BY MR. ROBINSON:

17 Q Mr. Crawford, what are your hobbies?

18 A. Motorcycle riding.

19 Q What kind of motorcycle, or motorcycles? Do you
20 have more than one?

21 A. Yes.

22 Q Would you describe them to me?

23 A. I've got one road machine I like to ride it and
24 then one I do a lot of trail riding.

25 Q Belong to any clubs or organizations of guys that

1 get together and ride motor bikes?

2 A. No, nothing official.

3 Q. Do any racing?

4 A. No.

5 Q. Have you or any member of your close family run
6 afoul of the law and been charged with any criminal offenses,
7 other than traffic violations?

8 A. Not that I know of.

9 Q. Have any members, you or any members of your
10 family, close relatives or friends, ever been a victim of any
11 crime committed against them?

12 A. By "crime" you mean how serious?

13 Q. Anything that the other person was charged with or
14 chargeable with as a crime against society?

15 A. Other than small claims or something like that?

16 Q. Well, those are more in the civil nature. I was
17 thinking --

18 A. No, not that I know of I haven't.

19 Q. In other words, no robbery, burglary, mugging or
20 anything of this nature?

21 A. No.

22 Q. Now, does the mere fact that Mr. Creech is
23 incarcerated raise any presumption in your mind that more than
24 likely he is guilty?

25 A. No.

1 Q You stated that you do not attend church on a
2 regular basis. Were your parents members of any particular
3 church?

4 A No, they weren't.

5 Q Do you believe in God?

6 A Yes.

7 Q Do you believe that Satan exists?

8 A Yes.

9 Q Have you heard any conversations about any
10 witchcraft being performed, or ceremonies held here in the
11 Silver Valley area?

12 A In the immediate area?

13 Q Here in this North Idaho area.

14 A Yes, I have heard stories.

15 Q Would you tell us about it?

16 A Oh, just that there was supposed to be some
17 groups over around the Rathdrum area and they were doing
18 sacrifices and stuff like that.

19 Q Sacrifices of what?

20 A Of cows, animals.

21 Q To your knowledge was there anything factual in
22 that regard?

23 A No.

24 Q Was it rumor?

25 A Just rumors, stories.

1 Q What impression did it make upon you?

2 A Didn't really make any.

3 Q Did you happen to see the movie Sunday evening
4 Kathryn, the girl revolutionary?

5 A Yes.

6 Q What impression did that make upon you; if any?

7 A It impressed me as somebody trying to make some
8 money over this Patty Hearst thing.

9 Q Mr. Crawford, if the evidence in this case and
10 some testimony involves vulgar, profane, coarse, crude
11 language, would this in itself tend to prejudice you against
12 the defendant?

13 A No.

14 Q And in the event there is, as part of the State's
15 evidence, there are color photographs of the deceased victims
16 that are somewhat grotesque, would this in itself tend to
17 prejudice you against Mr. Creech?

18 A No, it wouldn't prejudice me, might upset me, but
19 wouldn't prejudice me.

20 Q In other words, you'd still look at all the evidence
21 and keep an open mind until all of the evidence has been
22 submitted to you by the State and by the defense?

23 A Yes.

24 Q Mr. Crawford, you know your mind and yourself
25 and your personality better than anyone in this entire

1 courtroom. Is there anything, as you look inwardly upon
2 yourself, that you would -- that would disqualify you as to
3 sit as a juror in this case?

4 A. No.

5 MR. ROBINSON: Pass for cause, Your Honor.

6 THE COURT: Mr. Crawford, we'll ask you to step back
7 into the jury room and wait there until further instructions.

8 I will ask you not to discuss the questions that's
9 gone on here with any of your members of the panel about the
10 questioning.

11 You are excused, but you can step back in the
12 jury room. You will have to wait there.

13 We'll take a short recess at this time.

14 (Recess taken.)

15 THE COURT: Back on the record.

16 MR. ROBINSON: Your Honor, the state of the record,
17 as I find it, Carol Spaulding plead guilty to a charge of
18 Harboring a Fugitive and not as an accessory. I was just
19 looking at the Judgment that Mr. Remaklus has and, perhaps,
20 ask the Court for some clarification there. I find confusing
21 reports.

22 THE COURT: I don't have her file with me so I can't
23 check it anyway.

24 MR. REMAKLUS: I brought my file.

25 THE COURT: I am inclined to think if somebody

1 prepared the Judgment in those words they prepared a bad
2 judgment, didn't accurately reflect the records.

3 MR. REMAKLUS: In looking at who prepared the Judgment

4 THE COURT: That's the way I thought it was, that's
5 why I said what I did.

6 MR. REMAKLUS: The buck stops here.

7 THE COURT: What section did you think she was charged
8 -- was she charged under?

9 MR. REMAKLUS: 18-205, Judge.

10 THE COURT: That sounds like the Accessory section to
11 me.

12 That section, Accessories Defined: "All persons
13 who, after full knowledge that a felony has been committed,
14 conceal it from the Magistrate, or harbor and protect the
15 person charged with or convicted thereof, are accessories."

16 MR. REMAKLUS: That's the language right out of the
17 Statute that I used, Your Honor.

18 MR. ROBINSON: Thank you very much, Your Honor.

19 THE COURT: I will advise Counsel that Juror No. 49,
20 I have a doctor's certificate that that juror has a condition
21 that requires an excuse and is there any objection by Counsel?

22 MR. ROBINSON: No objection, Your Honor.

23 MR. THOMAS: No objection by the State, Your Honor.

24 THE COURT: That's number 49, Billie L. Howard.

25 MR. ROBINSON: Your Honor, for clarification would you

1 look at Defendant's sixth and advise me that I have correctly
2 marked the name of -- excuse me, may I approach the bench?

3 THE COURT: Well, I can tell you who it was, yeah.
4 It was -- do you want to know?

5 MR. ROBINSON: Yes.

6 THE COURT: Jerry Adams.

7 MR. ROBINSON: Yes.

8 THE COURT: All right, Defendant's seventh.

9 All right, the next stand-by juror is number 76,
10 that's Ernest Mollendorf.

11 Draw another name, please.

12
13 ERNEST P. MOLLENDORF,
14 a prospective juror herein, having been first duly sworn, took
15 the stand and testified as follows:

16
17 VOIR DIRE EXAMINATION

18 BY THE COURT:

19 Q Mr. Mollendorf, is it "Mollendorf"?

20 A Yes, but it's really Paul.

21 Q It should be Paul?

22 A Yes.

23 Q All right. I'll show "Paul".

24 Mr. Mollendorf, I want to ask you a few questions
25 first and then each attorney will ask you a few. Everything

1 we say here has to be reported by the Court Reporter so you will
2 need to answer loudly enough for him to hear you and he can't
3 get a nod of the head so if you will answer audibly when we
4 ask questions.

5 A. Okay.

6 Q. I want to visit with you first about the procedure
7 we'll follow once we start the taking of evidence and the jury
8 is completely selected.

9 At that stage of the trial we'll do what we call
10 sequester the jury; which means you won't be able to go home
11 during recesses or at night. We'll house the jurors in a motel.
12 Arrangements have been made with the Stardust to do this,
13 take your meals in restaurants together under the supervision
14 of the Bailiffs and this will last for the duration of the
15 trial.

16 None of us knows right now how long the trial
17 will last, but our estimate is three weeks and that's,
18 probably, a reasonable estimate.

19 The first thing we will like to know is whether
20 there's anything in your personal life, your home situation,
21 your work situation, that would make it impossible for you to
22 serve under these circumstances, or create an extreme hardship
23 for you.

24 Now, we don't ask you about any convenience
25 because we know it's going to be inconvenient for all the

1 jurors, but we do -- we would like to know if there's anything
2 in your particular circumstance that would really create a
3 serious problem for you?

4 A. No, the mining company is paying my wages.

5 Q. You could serve under these conditions?

6 A. And I'm single.

7 Q. Okay. I will turn to another subject, then.

8 Under our system of justice and philosophy of
9 criminal law, Mr. Mollendorf, a defendant in a criminal action
10 is presumed to be innocent until his guilt is established
11 beyond a reasonable doubt. This has the effect of putting the
12 burden on the State to prove him guilty beyond a reasonable
13 doubt. Those terms will be defined when I instruct the jury
14 later on in the trial in more detail. For the present
15 purposes it's sufficient to tell you that the effect of this
16 is that the defendant doesn't have to do anything to prove
17 his innocence.

18 In other words, our system puts the burden on the
19 State to prove the guilt beyond a reasonable doubt and doesn't
20 put any burden on the defendant.

21 Obviously when the case is fully submitted and
22 all the evidence has been presented and the Court has
23 instructed the jury and the jury is retired to deliberate the
24 jury will then have to weigh the evidence and determine the
25 issue of guilt or innocence based on the evidence and

1 instructions of the Court and make a decision at that time.

2 But, as we sit here in court today without any
3 evidence having been presented the effect of this principle is
4 that the defendant, Mr. Creech, must be considered to be
5 innocent at this time.

6 I'm wondering whether you are able at this time to
7 give him the full benefits of this principle and consider him
8 to be innocent?

9 A. I think so.

10 Q. Have you read or heard anything about this case
11 in the newspapers or radio or TV or from any individual?

12 A. Just that it was going to be transferred up here.

13 Q. What source did you get that from, the newspaper
14 story, radio, TV or do you remember?

15 A. Just the newspaper and that was way last summer.

16 Q. Do you recall any other facts that were reported
17 in that story other than the fact that it was going to be
18 transferred?

19 A. No.

20 Q. You are saying, as far as your present memory is
21 concerned, then, you don't have any knowledge or purported
22 knowledge of any purported facts in this case about Mr. Creech
23 then?

24 A. I don't think so.

25 Q. And from any source, then, other than people or

1 anything?

2 A. Well, you hear some of it around town.

3 Q. Can you tell us, maybe, some of the things you've
4 heard that you remember?

5 A. Oh, supposed to have shot a couple people and
6 that's about it.

7 Q. About the same thing I told you in court the other
8 morning?

9 A. Yeah, um-hmm, just about the same thing.

10 Q. Heard anything else at all about the case, or
11 about Mr. Creech?

12 A. Nope. I very seldom read the front page of a
13 newspaper.

14 Q. These few things that you have read or heard,
15 has it caused you to form any opinion as to guilt or innocence
16 of the defendant?

17 A. No.

18 Q. I want to turn to another subject, then,
19 Mr. Mollendorf.

20 Under our Idaho law, neither the jury nor the
21 Judge has any discretion as to the penalty to be imposed for
22 First Degree Murder. The legislature has taken this
23 completely out of the jury's hands and out of the Judge's
24 hands and made this determination itself. The legislature has
25 provided that for First Degree Murder the death penalty is

1 mandatory.

2 Now, this means that the only issue this jury
3 will vote on and have to decide is guilt or innocence of the
4 First Degree Murder, or lesser-included offenses. The jury
5 will not be voting on, or considering the penalty, but it's
6 fair for you to know that if the First Degree -- if a First
7 Degree Murder verdict is rendered that the death penalty will
8 be mandatory and automatic.

9 So, you need to know that but, still, you wouldn't
10 be voting on that, you'll just be voting on the issue of guilt
11 or innocence.

12 Now, do you have any personal beliefs or
13 feelings about the death penalty which would prevent you from
14 fairly considering the issue of guilt or innocence under the
15 instructions of the Court?

16 A. No.

17 Q. Mr. Mollendorf, under our system of trials it's
18 the sole function of the jury to determine the facts, weigh
19 the credibility of witnesses, give weight -- how much weight
20 they want to to the evidence. The Judge hasn't got anything
21 to do with that.

22 On the other hand, it's up to the Judge to tell
23 the jury what the applicable law is and the jurors are
24 supposed to follow that law under their oaths. I think
25 occasionally jurors find that perhaps the law is a little

1 different than they thought it was, or maybe think that it
2 should be. But, their oath still requires them to follow the
3 law as stated to them by the Court.

4 Is there any reason why you couldn't comply with
5 that and follow the law as I state it to you?

6 A. I don't think there is.

7 Q And, even if it turns out the law is a little
8 different than you thought it was, you'd still follow my
9 instructions, is that right?

10 A. Yes.

11 Q Do you know of anything that would prevent you
12 from being a fair and impartial juror to both sides in this
13 case?

14 A. No.

15 THE COURT: Counsel may examine.

16 MR. REMAKLUS: Thank you, Judge.

17
18 VOIR DIRE EXAMINATION

19 BY MR. REMAKLUS:

20 Q How long have you -- see, you've lived here in
21 Shoshone County all your life; haven't you, Mr. Mollendorf?

22 A. Yes.

23 Q Do you have other family here in the area?

24 A. My mother.

25 Q Your mother?

1 Q. Yes.

2 Q. So far as you are concerned, what you've heard
3 about this case you feel that you would not -- not permit
4 that to interfere with your view of the evidence that you
5 would get here in the courtroom; by this I mean you could
6 make up your mind on the evidence here, couldn't you?

7 A. Yes.

8 Q. Of course, the Judge's instructions will be read
9 to the jury and then you'll actually take a copy of those to
10 the jury room with you, sort of have a chance to look them
11 over and I'm sure you wouldn't have any difficulties then
12 with hearing them and then reading them.

13 Do you think that if the State meets their
14 obligation of proving this case beyond a reasonable doubt and
15 that if your view of the evidence is that he is -- that guilt
16 has been established beyond a reasonable doubt, do you think
17 the fact that there is a death penalty involved, would that
18 interfere with your exercise of your own best judgment?

19 A. No.

20 Q. Fine. Do you have any hobbies, Mr. Mollendorf?

21 A. I hunt and fish and play golf.

22 Q. Um-hmm. You have a religious preference?

23 A. Well, baptized Catholic.

24 Q. Um-hmm. Are you an occasional church goer?

25 A. Not very often.

1 Q Do you -- see, you said you didn't read the
2 papers much. You take any magazines, get any magazines?
3 In the mail, pick them up at the newsstand?

4 A Golf Digest and some other magazines, start at
5 the back -- start at the sports page and then the funnies and
6 go from there.

7 Q Um-hmm. Do you watch television in the evenings?

8 A Yes.

9 Q Have any of these programs you've watched, have
10 they been like Petrocelli, some of those?

11 A Yeah.

12 Q That's not going to give you any preconception
13 of what lawsuits would be like here in Wallace, Idaho, would
14 it?

15 A I don't think so.

16 Q Have any of your members of your family or
17 any of your close friends ever had occasion to be brought
18 before a Court?

19 A No, not unless you mean tickets or that.

20 Q I don't mean that either. I assume that we are
21 all strangers to you, is that right?

22 A Right.

23 Q And are you -- do you work as a contract miner,
24 or gypo?

25 A Timber repairman.

1 Q So, you are on a straight wage?
2 A Straight wage.
3 Q Yeah, I understand. And Hecla pays so you don't
4 have any problem --

5 A Right.

6 Q -- while you are here?

7 MR. REMAKLUS: Fine, we'll pass the juror for cause,
8 Your Honor.

9
10 VOIR DIRE EXAMINATION

11 BY MR. ROBINSON:

12 Q Mr. Mollendorf, have either you, close members
13 of your family, good friends, ever been victims of crimes
14 committed against them?

15 A No.

16 Q And your comments, you say you were baptized
17 Catholic?

18 A Yes.

19 Q And seldom attend your church? However, do you
20 believe in God?

21 A Yes.

22 Q Do you believe in the existence of Satan?

23 A Well, if you believe in God you have to.

24 Q Have you heard any conversations, rumors or
25 otherwise, concerning the practice of witchcraft here in

1 North Idaho area?

2 A. Well, they say there is, but --

3 Q. Have you participated in any of the conversations?

4 A. No.

5 Q. Someone just said this to you?

6 A. Well, they said there was supposed to be some
7 someplace or that. I don't pay much attention to that.

8 Q. So, your comments you didn't pay much attention
9 to that, it didn't make much of an impression on you at all?

10 A. Right.

11 Q. Thought it was a lot of poppycock?

12 A. Yes.

13 Q. Is there anything in the search of your mind you
14 think that might disqualify you as a juror to sit on this
15 case?

16 A. No.

17 Q. You believe -- at the onset, can you start out
18 totally unbiased, unprejudiced and keep your mind open until
19 all of the evidence is submitted to you and render a fair
20 trial?

21 A. I think so.

22 MR. ROBINSON: Pass, Your Honor.

23 THE COURT: Mr. Mollendorf, we'll ask you to step back
24 into the jury room and wait there until you get further
25 instructions. If you will not discuss the questions here

1 with other members of the panel as they come in.

2 State's eighth pre-emptory.

3 The stand-by juror is number 12,
4 Velma Canterbury.

5 I'll have the Clerk draw another name.
6

7 VELMA R. CANTERBURY,
8 a prospective juror herein, having been first duly sworn, took
9 the stand and testified as follows:
10

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q Mrs. Canterbury, I want to ask you a few
14 questions and then the attorneys will want to ask you some
15 questions. All these questions and answers have to be
16 reported by the Court Reporter sitting right here (indicating)
17 so you'll need to answer loudly enough for him to hear you.

18 A Okay.

19 Q He can't report a nod so you'll need to answer
20 audibly during these questions if you would, please.

21 A Okay.

22 Q I want to visit with you for a minute about the
23 procedure that we'll follow once we start receiving evidence
24 and get into the regular trial of the case after the jury is
25 selected to see if there is anything that would prevent you

1 from serving under that procedure.

2 Once we reach that point the jury will be
3 what we call sequestered; which means you won't be able to go
4 home during recesses in the evening, we'll house the jurors
5 at a motel. Arrangements have already been made at the
6 Stardust for this. The jurors would have to take their meals
7 together at restaurants under the supervision of the Bailiffs
8 and this will last for the entire trial once we start this.

9 A. Yes, I understand that.

10 Q. Okay. Now, we don't know how long the trial will
11 last. Our best estimate right now is about three weeks, that
12 could be wrong because we don't know. I think that's a
13 reasonable estimate.

14 Now, understanding this procedure, is there
15 anything in your personal life, your home situation, any
16 work situation you have that would make this impossible for
17 you to serve under these circumstances or would create an
18 extreme hardship?

19 We ask in terms of that because we know it will
20 be inconvenient for everybody so we can't just ask you whether
21 it would be inconvenient. But, we need to know whether
22 there's a serious problem that it would create for you.

23 A. No, I don't believe so.

24 Q. You think you could serve under those conditions?

25 A. I think I can.

1 Q All right.

2 THE COURT: Excuse me just a minute. Apparently we
3 drew another name that was excused so we'll draw another
4 name.

5 Q BY THE COURT: I want to turn to another subject,
6 then, Mrs. Canterbury.

7 Under our system of criminal justice and
8 philosophy in criminal law a defendant in a criminal action
9 is presumed to be innocent until his guilt is proved beyond
10 a reasonable doubt. This has the effect of placing the
11 burden on the State to prove the defendant guilty beyond a
12 reasonable doubt and it means the defendant doesn't have to do
13 anything to prove that he's innocent. You understand that?

14 A Yes.

15 Q Now, naturally, when the evidence has all been
16 presented and the Court gives the jury instructions and the
17 jury is required to deliberate, the jury will then have to
18 weigh the evidence and vote on the question of guilt or
19 innocence under the evidence and instructions of the Court.
20 But, right now, before any evidence has been presented this
21 principle requires that Mr. Creech, the defendant here, be
22 considered to be innocent.

23 A Yes.

24 Q Of course, that continues with him until he's
25 been proved guilty beyond a reasonable doubt.

1 Are you able at this time to give him the full
2 benefit of this principle and consider him to be innocent?

3 A Yes, I think so.

4 Q Have you read or heard anything about this case
5 in the newspapers or radio or TV or gossip or any other
6 from individuals?

7 A No, not really. I just heard of him when you
8 brought him into the courtroom up there.

9 Q Apart from what I told you about when you came
10 into court, have you heard any other purported facts about the
11 case or about Mr. Creech?

12 A No.

13 Q Under our Idaho law, Mrs. Canterbury, the jury
14 nor the Judge has any discretion as to the penalty to be
15 imposed for First Degree Murder. The legislature has passed
16 a law that takes this completely out of the hands of the jury
17 and the Judge.

18 Under this law that the legislature passed, the
19 death penalty is mandatory for First Degree Murder. In other
20 words, it's automatic for First Degree Murder and the jury
21 doesn't have any choice and neither does the Judge.

22 Now, knowing this to be the law and knowing that,
23 actually, the only thing you will be voting on is guilt or
24 innocence but that the result would follow a guilty verdict for
25 First Degree Murder, is there anything in your personal

1 beliefs or feelings or do you have any personal beliefs or
2 feelings about the death penalty that would prevent you from
3 voting and fairly considering the issue of guilt or innocence
4 of First Degree Murder?

5 A. No, I don't think so.

6 Q. You feel you could do that?

7 A. Yes.

8 Q. Even though you know the penalty that would
9 follow, if you did vote for guilty of First Degree Murder --

10 A. Yes.

11 Q. Under the system that we try cases,
12 Mrs. Canterbury, it's the sole function of the jury to determine
13 the facts, or to weigh the credibility of witnesses and the
14 weight to be given to the evidence. The Judge hasn't got
15 anything to do with that and can't give you any instructions
16 on that.

17 On the other hand, it's the sole function of the
18 Judge to decide what the law is and to instruct the jurors on
19 the law. Under your oath as a juror you would be required to
20 accept the instructions as to the law that I would give you.
21 I'm sure occasionally jurors find that the law is a little
22 different than they thought it was, maybe sometimes they
23 think maybe the law should be different than it is.

24 If you have any such feelings when you read the
25 instructions, would you be willing to set them aside and

1 accept the law as I give it to you?

2 A. Yes, I think I would.

3 Q Do you know of anything that would prevent you
4 from being fair and impartial to both sides in this case?

5 A No.

6 THE COURT: Counsel may examine.

7

8 VOIR DIRE EXAMINATION

9 BY MR. THOMAS:

10 Q Mrs. Canterbury, I take it from what you've
11 said that if you felt that the evidence proved First Degree
12 Murder beyond a reasonable doubt that you could vote to
13 convict the defendant, even though the death penalty would
14 be mandatory in such circumstances; is that correct?

15 A Yes.

16 Q You would be willing and able to concentrate,
17 then, on whether the evidence shows guilt or innocence and
18 not even consider the penalty in your deliberations about
19 whether the defendant is guilty or not?

20 A Yes, I think so.

21 Q Do you feel that you could give the State, as
22 well as the defendant, a fair trial in this case?

23 A Yes.

24 Q Do you watch any programs on television,
25 Mrs. Canterbury, in which courtroom dramatizations occur or

1 in which lawyers are portrayed in their work?

2 A. Well, no, not very much.

3 Q. Have you seen programs like Petrocelli?

4 A. Yeah -- no, I don't watch that.

5 Q. You have seen it -- any of them -- have you
6 gotten any impressions from television programs about how
7 things should work in a courtroom?

8 A. No.

9 Q. In other words, you don't have any preconceived
10 ideas --

11 A. No.

12 Q. -- about what ought to happen in here and you are
13 not going to be distressed by anything like that?

14 A. No.

15 Q. Have you recently read any books or articles
16 about law or lawyers?

17 A. No.

18 Q. Have you read any such things about famous cases
19 or trials?

20 A. No.

21 Q. Do you understand, Mrs. Canterbury, that the
22 jurors in this case are the sole judges of whether or not the
23 witnesses are to be believed in case there is conflicting
24 evidence?

25 A. Would you repeat that again, please.

1 Q The members of the jury make their own determination
2 if there is conflicting evidence about who to believe.

3 A Yes.

4 Q You understand that to be the case?

5 A Yes.

6 Q Do you feel you'd have any problem doing that?

7 A I don't think so.

8 Q Now, the Court has mentioned the reasonable doubt
9 standard to you. I think that the Court will instruct that
10 a reasonable doubt, such as will cause the defendant's
11 acquittal, is just that, a doubt that is reasonable, not a
12 fanciful or imaginary doubt.

13 As a juror it would be up to you to determine
14 in your own mind after you've heard all of the evidence
15 whether you are certain that the defendant is guilty; that is,
16 that these charges have been proved beyond a reasonable doubt.

17 Do you feel any confusion about the difference
18 between a reasonable doubt and a fanciful or imaginary doubt?

19 A No.

20 Q You think you could tell the difference?

21 A I think so.

22 Q We don't wish to pry unnecessarily into your
23 personal affairs so I hope you will bear with me while I ask
24 you a few personal questions that we would like to know about.

25 Where were you born, Mrs. Canterbury?

1 A. In Hunter, Oklahoma.
2 Q And have you lived in the State for some period
3 of time?
4 A. In Idaho?
5 Q Yes.
6 A. Since '40.
7 Q 1940?
8 A. Yes.
9 Q And has all that been in this area around --
10 A. Yes.
11 Q -- Shoshone County?
12 A. Yes.
13 Q What is your educational background?
14 A. Well, I went through the eighth grade and that's
15 the end of it.
16 Q Have you taken anything like correspondence or --
17 A. No.
18 Q -- or special evening courses; things of that
19 kind?
20 A. No.
21 Q Do you read?
22 A. Yes, I read, but --
23 Q What kind of things do you read?
24 A. Oh, several different kinds of books and stuff.
25 Q Is there any particular kind of book that you

1 prefer?

2 A. Well, no, not really. I read stories and
3 different magazines and things.

4 Q. Mostly fiction?

5 A. No, not all of them are.

6 Q. What is your religious preference?

7 A. Well, the Methodist Church.

8 Q. And do you attend church there regularly?

9 A. No.

10 Q. Do you have any grown children, Mrs. Canterbury?

11 A. Yes, I have three.

12 Q. What are their occupations?

13 A. My son is a miner.

14 Q. He's in this area?

15 A. Yes. He works for the Hecla Mining Company. I've
16 got a daughter that works for Kentucky Fried Chicken down
17 here in Kellogg.

18 Q. Um-hmm.

19 A. And my other daughter is just a housekeeper.

20 Q. Are you acquainted with any of the lawyers in
21 this case?

22 A. In here?

23 Q. Yes.

24 A. No.

25 Q. Do you know whether any of your close friends or

1 relatives know or are associated in any professional capacity
2 with any of the lawyers who are appearing in this case?

3 A. No, I don't.

4 Q. Have you or any of your close friends or
5 relatives ever been involved in any legal differences in,
6 either, a criminal or civil lawsuit?

7 A. No.

8 Q. Have you ever been a witness in a criminal case
9 before?

10 A. No, I haven't.

11 Q. Have you had jury experience before?

12 A. Yes, one time.

13 Q. What kind of case did you serve on?

14 A. It was a civil case.

15 Q. And what was the case all about?

16 A. Well, it was about a -- kind of an assault case.

17 Q. Was it for damages?

18 A. I think so.

19 Q. Do you recall which side won the case?

20 A. Yes, was the one that Mr. Magnuson, for
21 Jack Clark.

22 Q. The plaintiff win then?

23 A. Yes.

24 Q. If it turned out that in this case the evidence
25 revealed that the victims, the people who were killed, were

1 very unpleasant people, would that, in your mind, tend to
2 excuse the murder, or tend to reduce the seriousness of it
3 in any way?

4 A. No, I don't think so.

5 Q. In other words, you'd concentrate on the issues
6 rather than pay any attention to what the victims were like?

7 A. Yes.

8 Q. Have you ever discussed this case,
9 Mrs. Canterbury, with anybody who expressed an opinion about
10 whether the defendant was innocent or guilty?

11 A. This case?

12 Q. Yes.

13 A. No.

14 MR. THOMAS: Pass Mrs. Canterbury for cause,
15 Your Honor.

16 MR. ROBINSON: May I proceed, sir?

17 THE COURT: Yes.
18
19
20
21
22
23
24
25

VOIR DIRE EXAMINATION

BY MR. ROBINSON:

Q Mrs. Canterbury, have either your members of your family, close friends, ever been victims of any crime being committed against them?

A No.

Q Do you believe in God?

A Yes.

Q Do you believe that Satan really exists?

A Well, I think there's two sides to that.

Q All right. Have you heard any conversation or participated in any conversations about witchcraft being practiced here in North Idaho?

A No.

Q And you've heard nothing of this case prior to His Honor telling you, along with the rest of the jurors Monday morning, about this case?

A No, I didn't.

Q Mrs. Canterbury, you know yourself better than anyone else here in this courtroom knows you and you know your own personality.

A Yes.

Q Do you know of anything, whether we've asked you or not, that might tend to disqualify you from sitting as a juror in this case?

1 A. No, I don't.

2 MR. ROBINSON: Thank you very much. Your Honor, we
3 pass Mrs. Canterbury.

4 THE COURT: All right, Mrs. Canterbury, we'll ask you
5 to step back into the jury room there and wait there until we
6 have further instructions.

7 We ask you not to discuss the questioning here
8 with any of the other jurors that may come in.

9 THE WITNESS: Okay, I won't.

10 THE COURT: Defendant's eighth.

11 The stand-by juror is number six, Wilford Bonomi.
12 I'll ask the Clerk to draw another name.

13
14 WILFORD D. BONOMI,
15 a prospective juror herein, having been first duly sworn, took
16 the stand and testified as follows:

17
18 VOIR DIRE EXAMINATION

19 BY THE COURT:

20 Q Mr. Bonomi, I'll want to ask you a few questions
21 and then each of the attorneys will want to ask you a few.
22 The Court Reporter has to take down the entire proceedings here
23 so you will have to answer loudly enough so that he can hear you
24 and write down your answers.

25 A. I'll try.

1,447 BONOMI, W., VOIR DIRE.

1 Q He can't get a nod of the head, so if you answer
2 audibly to all the questions, please.

3 A Okay.

4 Q I want to visit with you just briefly about the
5 procedure we're going to follow once the jury is finally
6 selected to try the case and we start receiving evidence.

7 At that point we're going to do what we call
8 sequester the jury; which means that the jurors won't be able to
9 go home during recesses or in the evening and we'll house the
10 jurors in a motel, already made arrangements for that at the
11 Stardust. The jurors will have to take their meals together at
12 restaurants and under the supervision of Bailiffs. This
13 procedure will continue during the entire trial until it's
14 over.

15 We don't know right now how long the trial will
16 last, actually, but we've made an estimate of three weeks and
17 that's, probably, a reasonable estimate.

18 What we'd like to know right now is whether there's
19 anything in your personal life, your home situation, work
20 situation, that would make it impossible for you to serve under
21 these conditions, or extreme hardship. We know that it's not
22 going to be convenient for any juror, so we're not talking about
23 just convenience, but something that would be very serious in
24 your situation.

25 A Yes. Well, as far as my job goes, my boss is,

1 really, in a bind right now. He's working -- brings a man out
2 of Spokane every day and then he has to go back and work down
3 there in the evening again. Whether this has something to do
4 with it, I don't know, but it's -- the only guy that knows
5 my routes is out of Spokane, motor freight. He has to come
6 back and forth every day when I'm off and there's, right now,
7 like I say, I don't know how it affects this, but it would put
8 this company in an awful bind.

9 Q Is your employer an Idaho company?

10 A Washington, he's based in Washington.

11 Q It's a Washington company?

12 A Yes.

13 Q So, he isn't subject to Idaho law then?

14 A I don't -- well, he's interstate.

15 Q I am wondering whether you are under any pressure,
16 or threats, that you will lose your job if you have to serve on
17 this jury?

18 A Well, I don't -- I wouldn't think so, no.

19 Q At least for employers that are subject to Idaho
20 law they can't discharge employees because of jury service.

21 A No, this just puts an awful bind on them.

22 Q Do you think he can function, though?

23 A Well, according to him practically no, this would
24 be between you and them, I would assume.

25 Q Do you -- how about your personal feeling? Do you

1 think this worry you and you'd be distracted and not be able to
2 follow the evidence and concentrate because this was weighing
3 on your mind?

4 A. I've already, more or less, know something that I
5 don't know if I could be fair or not.

6 Q. You know something about the case?

7 A. I have read a little and my boy is a Deputy.

8 Q. Deputy?

9 A. Sheriff, right here.

10 Q. Sheriff? I see. Have you heard some things that
11 purport to be facts about the case, or about Mr. Creech?

12 A. A few.

13 Q. Have these things you have heard caused you to form
14 an opinion as to his guilt or innocence?

15 A. I really believe so.

16 Q. Would this place some burden on him to come
17 forward with some evidence to prove he wasn't -- or to cause you
18 to set this aside?

19 A. This I couldn't really say.

20 MR. ROBINSON: I'd so stipulate, Your Honor.

21 MR. REMAKLUS: He may be excused, Your Honor.

22 THE COURT: All right, we appreciate the time you've
23 spent here, Mr. Bonomi, and your appearance.

24 We'll excuse you, then, under those circumstances.
25 Thank you for your appearance. You, perhaps, will be subject

1 to further call on other trials.

2 THE WITNESS: Yeah.

3 THE COURT: I don't think they will be this long or
4 have these consequences to you. But, the Jury Commissioner
5 will call you if they need you. Thank you for the time you
6 spent here.

7 Stand-by juror is number 44, Maxine Hill.

8 I'll have the Clerk draw another name.

9
10 MAXINE HILL,
11 a prospective juror herein, having been first duly sworn, took
12 the stand and testified as follows:

13
14 VOIR DIRE EXAMINATION

15 BY THE COURT:

16 Q Mrs. Hill, I'll want to ask you some questions
17 and then the attorneys want to ask you some questions. All our
18 questions and answers -- and your answers, have to be written
19 down by the Court Reporter so you'll need to answer loudly
20 enough for him to hear you.

21 A Okay.

22 Q And he can't get a nod, so if you will answer
23 audibly to all these questions, please.

24 A Okay.

25 Q I want to visit with you for just a minute first

1 about the procedure we'll follow once the jury is finally
2 selected and sworn to try the cause and we start taking evidence
3 in the case.

4 At that point the jury will be sequestered; which
5 means they won't be able to go home during recesses or at night
6 and we have arranged to house them at the Stardust Motel. They
7 will take their meals together at restaurants under the
8 supervision of the Bailiffs and this will last during the entire
9 trial until it's over.

10 None of us know right now how long the trial will
11 take, we made an estimate of three weeks, that's, probably, a
12 reasonable estimate.

13 Understanding this procedure, is there anything
14 in your personal life or your home situation or your work
15 situation that would make it impossible to serve as a juror
16 under these conditions, or create an extreme hardship for you?

17 A No.

18 Q Okay. Let me turn to another subject, then.

19 Under our system of justice and philosophy of
20 criminal law a defendant in a criminal action is presumed to be
21 innocent until his guilt is established beyond a reasonable
22 doubt. This means that the defendant doesn't have to prove
23 anything to prove he's innocent because the law cloaks him
24 with that presumption and the burden is on the State to prove
25 him guilty beyond a reasonable doubt. I'll define these terms

1 more for you, the jury, later on in the trial.

2 For the present purposes it means, basically, that
3 right now application of this principle requires Mr. Creech to
4 be considered innocent.

5 Now, of course, you recognize that once the
6 evidence is all in and the Court will instruct the jury on the
7 law and the jury is required to deliberate on the verdict, then
8 you'll have to weigh this evidence under the instructions of
9 the Court and decide whether there is proof beyond a reasonable
10 doubt and vote on guilt or innocence. But, right now before
11 any evidence has been presented and until there is proof
12 beyond a reasonable doubt, as I say, our philosophy and
13 principle requires Mr. Creech to be considered innocent.

14 Is there anything that would prevent you at this
15 time from giving him a full benefit of this principle and
16 considering him to be innocent right now?

17 A. No.

18 Q. You can do that?

19 A. Um-hmm.

20 Q. Have you read or heard anything about this case
21 on the news, or radio or television or just from individual
22 conversations with other people?

23 A. No.

24 Q. In other words, as you sit here today you don't
25 have any knowledge of any purported facts about the case or

1 about Mr. Creech; other than what I've told you in court the
2 other day?

3 A. That's right.

4 Q. That's all you know about it?

5 A. That's right, that's all I know.

6 Q. Under our Idaho law, neither the jury nor the Judge
7 has any discretion as to the penalty to be imposed for First
8 Degree Murder. The legislature has passed the statute that
9 takes this completely out of the jury's hands and out of the
10 Judge's -- the Judge's hands.

11 Our legislature in that statute has made the death
12 penalty mandatory and automatic for First Degree Murder. What
13 this means is that a jury will not be voting on the penalty
14 at all but simply be voting on the issue of guilt or innocence
15 under the instructions of the Court.

16 Likewise, the Judge wouldn't have anything to say
17 about it if the defendant were convicted of First Degree
18 Murder, the penalty would be automatic and mandatory.

19 Understanding the law to be such, do you have any
20 personal feelings or beliefs about the death penalty that would
21 prevent you from fairly considering the evidence and the law
22 and making a decision as to the issue of guilt or innocence?

23 A. No.

24 Q. You feel you could do that in spite of this
25 penalty you know was involved?

1 A. Yes.

2 Q. As the trial is conducted, as we conduct the
3 trials and the way they are handled, Mrs. Hill, the jury has
4 the sole function of deciding the facts, deciding the
5 credibility of witnesses, how much weight to give to the
6 evidence. The Judge has nothing to do with that and can't
7 control the jury's discretion at all as to that matter.

8 On the other hand, the Judge has the sole function
9 to decide what the law is and instructing the jury as to the law
10 and the jurors are supposed to accept the law from the Court.

11 Now, occasionally I'm sure jurors find that the
12 law is different than they thought it was, or perhaps they
13 even disagree with the law and think it's a bad law.

14 Do you feel that you are in such a condition that
15 if you would run into this problem, if you find the law is
16 different than you thought it was, or maybe even felt that it
17 isn't a particularly good law, that you could still accept the
18 law as I state it to you and follow my instructions?

19 A. Yes.

20 Q. Do you know of anything, whether I've asked you or
21 not, that would prevent you from being a fair and impartial
22 juror to both sides in this case?

23 A. No, I don't think so.

24 THE COURT: Counsel may examine.

25 MR. REMAKLUS: Thank you, Your Honor.

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q. Mrs. Hill, you have one child living at home now?

A. Yes.

Q. And that's a boy or girl?

A. A boy.

Q. Is he working?

A. Yes.

Q. What does he do?

A. He works at the Galena Mine.

Q. And has Mr. Hill -- has he been a miner or employed in the mines? Has that been his life's work?

A. Yes.

Q. I see you have lived here in this county for a long time; haven't you?

A. Yes, 57 years.

Q. What is your religious preference, Mrs. Hill?

A. Lutheran.

Q. Are you active in the church?

A. No.

Q. Do you -- are you active in civic things in Smelterville? Do you belong to some ladies' groups?

A. I belong to the Eastern Stars.

Q. Um-hmm. Do you and Mr. Hill have any hobbies?

A. Fishing, hunting; things like that.

1 Q Um-hmm. Watch television?
2 A Once in awhile. I don't watch it too much.
3 Q You don't have any preconceived ideas, then, from
4 watching television what a trial should be like, then?
5 A No, not too much. I don't care for television
6 too much.
7 Q All right. What kind of magazines do you folks
8 subscribe to?
9 A Oh, we don't subscribe to any. I read books, but
10 I don't take any magazines at home.
11 Q Do you take the daily paper?
12 A Yes.
13 Q What kind of books do you generally read?
14 A Oh, autobiographies or history books such as that.
15 Q Have you read any recent books about, oh, famous
16 legal cases or anything like that?
17 A No.
18 Q Have you read books about prominent lawyers?
19 A No.
20 Q I meant to ask you about your other child. Is
21 that a boy or girl?
22 A Girl.
23 Q Where does she live?
24 A In Spokane.
25 Q Um-hmm. Is she employed?

1 A. Yes.

2 Q. What kind of work does she do?

3 A. She's working in a business office, Valley General
4 Hospital.

5 Q. And is she married?

6 A. Yes.

7 Q. And what does her husband do?

8 A. He's -- not personnel director -- well, he works
9 for VIRA Water and Irrigation in the valley.

10 Q. Does he work for a brewery?

11 A. VIRA Irrigation and Water is the name of the
12 company.

13 Q. Thank you, I misunderstood.

14 Are you sure that if you are selected as juror
15 here and you are called upon to listen and -- to the testimony
16 and see the exhibits and so on, do you think that you can
17 base your decision as to whether or not this defendant is
18 guilty of murder in the first degree, can you base your decision
19 on the evidence and not be bothered by this penalty thing that
20 you know about now, the death penalty?

21 A. I think so.

22 Q. You think you can separate that?

23 A. Um-hmm.

24 Q. Of course, what we're asking you to do is be
25 strictly objective and decide this case on the evidence and

1 not on sympathy or any kind of personal feeling.

2 A. Um-hmm.

3 Q Have you, any of your friends or family ever been
4 involved in any kind of a lawsuit?

5 A. No.

6 Q And you've never been a juror before either, have
7 you?

8 A. No.

9 MR. REMAKLUS: I think we'll pass the juror for cause,
10 Your Honor.

11 MR. ROBINSON: If I may, Your Honor?

12 THE COURT: Yes.

13

14 VOIR DIRE EXAMINATION

15 BY MR. ROBINSON:

16 Q Mrs. Hill, have either you, your family, or
17 close friends been a victim of a crime committed against you
18 or they?

19 A. No.

20 MR. ROBINSON: Pass this juror for cause, Your Honor.

21 THE COURT: All right, Mrs. Hill, we'll ask you, then,
22 to step back into the jury room. You'll have to remain there
23 until you get further instructions. You are not to discuss
24 the questioning here that's taken place with other members of
25 the panel as they come in.

1 THE WITNESS: Okay.

2 THE COURT: State's ninth.

3 All right, stand-by juror is number 58,
4 Jacqueline Jordan.

5 I'll have the Clerk draw another name.
6

7 JACQUELINE C. JORDAN,
8 a prospective juror herein, having been first duly sworn, took
9 the stand and testified as follows:
10

11 VOIR DIRE EXAMINATION

12 BY THE COURT:

13 Q Is it Mrs. Jordan?

14 A I'm divorced.

15 Q Okay. I'm going to ask you a few questions and
16 then, after I get through, each attorney will want to ask you
17 a few. All of the proceedings have to be reported by the
18 Court Reporter, sitting right here (indicating), so you will
19 have to answer loudly enough for him to hear your answers and
20 he can't write down a nod so you will have to answer audibly
21 so that he can hear your answer.

22 A Okay.

23 Q Mrs. Jordan, I'd like to just visit with you a
24 minute about the procedure we're going to follow in this case
25 as far as handling the jury after we fully select the jury and

1 swear them to try the cause and start the receiving of evidence.

2 At that point in the trial we do what we call
3 sequester the jury; which means the jurors can't go home during
4 recesses or in the evening. We have arranged at the Stardust
5 Motel, to house the jurors at the motel in the evening recesses,
6 the jurors will take their meals at restaurants under the
7 supervision of the Bailiffs. This procedure will go on until
8 the trial is over.

9 Now, we don't know how long the trial will last
10 right now, none of us do. We've estimated it at three weeks
11 and that, probably, is a reasonable estimate.

12 Bearing this procedure in mind, we need to know,
13 first here, whether there's anything in your personal life,
14 your home situation or any work situation involved in that
15 that would make it impossible for you to serve as a juror
16 under these conditions, or that would create an extreme
17 hardship for you. I use those sort of excessive terms because
18 we know all the jurors will be inconvenienced, it won't be
19 convenient for anybody, so we can't just ask you whether it's
20 convenient. But, we would like to know if there's anything
21 in your particular circumstance that would create a severe
22 hardship for you to serve under these conditions.

23 A. My son is 20 months old, my mother isn't really,
24 after three days we've decided to make arrangements for the
25 possibility if I should be selected, she'd watch them and I

1 feel -- I don't think it would be a hardship at all.

2 Q Would you feel comfortable about your mother
3 doing this?

4 A Yes, she's used to babysitting. It would be
5 all right.

6 Q And your baby would be comfortable with your
7 mother? They are acquainted?

8 A Yes.

9 Q All right, I will say that while you will be under
10 oath, if you are chosen as a juror, not to discuss the case
11 with anyone, or let anyone discuss the case with you or
12 receive any communications about the case, but it would be
13 possible to, through the Bailiffs, send communications on
14 personal matters and get the communications back on purely
15 personal matters. So, you would be able to check occasionally
16 through the Bailiffs just to see how things are going at home.

17 A Thank you.

18 Q If that would relieve it any.

19 You feel you would be willing and could, then,
20 serve under these conditions?

21 A Yes.

22 Q Turn to another subject, then, Mrs. Jordan.

23 Under our philosophy of criminal law and system of
24 justice, a defendant in a criminal action is presumed to be
25 innocent until his guilt is established beyond a reasonable

1 doubt. This, of course, puts the burden on the State to
2 prove him guilty beyond a reasonable doubt and in effect means
3 he doesn't have to do anything to prove his innocence.

4 Of course, procedurally, as we sit here right now
5 no evidence has been presented at all against him. As the
6 evidence comes in, of course, we'll eventually reach a point
7 where all the evidence is in and the Court will instruct the
8 jury on the law, the jury will retire to deliberate on a
9 verdict. At that point the jurors will have to make the
10 decision as to guilt or innocence based on the instructions
11 of the Court and this instruction about proof beyond a
12 reasonable doubt.

13 But, that's all in the future. As we sit right
14 here today this philosophy and principle I've explained to you
15 means that Mr. Creech must be considered innocent as he sits
16 here today.

17 Now, is there anything that would prevent you from
18 giving him the full benefit of this principle in considering
19 him to be innocent?

20 A. No, I don't think so. From the minute I got my
21 first notice I've just put it through my head to ignore anything.
22 I didn't know the man's name until Monday.

23 Q Until I explained it in court Monday?

24 A. Yes.

25 Q. Probably that answered my next question. I was

1 wondering whether you have read or heard anything at all about
2 the case in newspapers or radio or TV or from conversations
3 with individuals?

4 A. Most I've heard is that it's a murder trial.
5 That's all I have heard.

6 Q. You've heard it is a murder trial?

7 A. Yes.

8 Q. You say you did not even know the name of the
9 defendant until you heard it Monday --

10 A. No.

11 Q. -- in court?

12 So, as far as you are -- your mind and memory
13 are concerned right now, you don't know anything or any
14 purported facts about the case or about Mr. Creech, except
15 what I explained in court; is that what you are telling me?

16 A. None.

17 Q. Under our Idaho law, neither the jury nor the
18 Judge has any discretion as to the penalty to be imposed for
19 First Degree Murder. Our legislature has taken it upon itself
20 to take that completely out of the hands of the jury and the
21 Judge.

22 The legislature has passed a statute that makes
23 the death penalty mandatory in Idaho on First Degree Murder
24 which, in effect, means that the jury wouldn't be considering
25 the penalty. The Judge won't have anything to do with the

1 penalty if the decision is First Degree Murder -- or conviction
2 of First Degree Murder.

3 So, what that means is the only issue the jury
4 will actually be voting on is on the decision of guilt or
5 innocence of the charge, or of some lesser offense.

6 I'm wondering, knowing that this penalty is
7 automatic and mandatory; whether there's -- do you have any
8 personal beliefs or feelings about the death penalty which,
9 even though you wouldn't be voting on that directly, would
10 interfere with your consideration of the issue of guilt or
11 innocence and prevent you from fairly considering that issue?

12 A. I have feelings against -- well, about the death
13 penalty. When you put it the way that it's out of the hands
14 of the jury or Judge, I don't know. I was under the
15 impression, perhaps it's mistaken, but I was under the
16 impression that the Supreme Court of the United States had
17 declared the death penalty unconstitutional.

18 Q Well --

19 A. Is this right?

20 Q Put it this way. You are correct under -- in a
21 particular case and under particular circumstances and a
22 particular statute, what the Supreme Court was considering,
23 they did make that ruling. But, I think that interpretation
24 is -- the interpretation of that case has been that under
25 proper circumstances and properly drawn statutes, that it isn't

1 completely outlawed. Now, even that question is still
2 pending in the Supreme Court. I think a case has been argued
3 up there again testing one of these new statutes.

4 But, the Idaho Statute was passed pursuant to
5 that decision to try to meet the requirements of that decision.
6 So, I think you have to accept the fact that, at this point,
7 that under Idaho law that death penalty is mandatory right
8 now. None of us know what the future will be as far as future
9 decisions go. But, this Idaho statute was passed pursuant
10 to that Supreme Court decision to try to meet its requirements.

11 So, bearing that in mind, that that is the law
12 and you can't really, I don't think, safely assume that it's
13 going to be held unconstitutional at this point; would this
14 prevent you from fairly passing on the issue of the guilt or
15 innocence; knowing that if you did decide that he was guilty
16 of First Degree Murder that the legislature has fixed that
17 penalty?

18 A. I don't know if I can honestly answer that.
19 I haven't, really, given it any thought. I know that if I
20 were to make a decision I would have to be willing to point a
21 gun at the defendant and shoot him myself in order for myself
22 to make the decision of the death penalty. When it's put this
23 way, I haven't thought it out.

24 Q. I can see that would be one way of looking at it.
25 I suppose another way of looking at it maybe you would consider

1 that rationalization, but another way of looking at it, I
2 suppose, would be to say, "Well, you aren't pointing the gun,
3 the legislature did", that will have to be on their
4 conscience and not yours.

5 You are the only one that can search your mind
6 on this point, Mrs. Jordan, and we'll give you, if you want to
7 think about it, and think a minute about it and do that. But,
8 I think ultimately we do need an answer from you whether
9 your feeling about the death penalty would prevent you from
10 fairly weighing the evidence and the law on the issue of guilt
11 or innocence; knowing that's the only issue you can vote on.

12 A On the issue of guilt or innocence I don't think
13 that would sway me one way or another. I just can't honestly
14 say -- I think I would be able to determine guilt or innocence,
15 I couldn't tell a person that he had to die.

16 Q But, you wouldn't, at least -- you might consider
17 it rationalizing, the legislature would, if that were your
18 decision.

19 A Yes.

20 Q You feel, under those circumstances you would be
21 able to vote, then, on guilt or innocence and fairly weigh
22 the evidence and return a verdict of First Degree Murder if you
23 felt it was proved beyond a reasonable doubt under my
24 instructions?

25 A Yes, I think I could.

1 Q Along that line, Mrs. Jordan, dividing the function
2 of the Judge and the jury in a case like this, the jury is the
3 sole judge of the facts and weight to be given to the evidence.
4 The credibility of witnesses, I can't interfere with your
5 decision at all in that. Conversely, it's the sole function of
6 the Judge to determine what the law is and instruct the jury
7 on the law and the jury is bound by their oath to accept the
8 law as the Court states it to them.

9 Now, occasionally, I'm sure it's true that jurors
10 find the law is different than they thought it would be and
11 that, perhaps they might even think it's a bad law, or
12 disagree with it. But, I'm wondering whether, if you run into
13 that situation, you could set that aside and in good conscience
14 accept the law as I state it to you; even though you might
15 have thought the law was different, and accept the instructions
16 of the Court. Could you do that?

17 A In my youth I probably couldn't have and I've
18 mellowed out in my old age, I'd say yes, sir.

19 Q You understand that would be your duty as a juror?

20 A Yes.

21 Q As I say, the law is sort of dividing the functions.
22 I can't infringe on the jury's responsibilities to decide the
23 facts and the jury shouldn't infringe on my responsibility to
24 decide the law. You think you can make that division all right?

25 A I would hope so, yes.

1 Q Do you know of anything that would prevent you
2 from being a fair and impartial juror to both sides in this
3 case?

4 A No.

5 THE COURT: Counsel may inquire.
6

7 VOIR DIRE EXAMINATION

8 BY MR. THOMAS:

9 Q Mrs. Jordan, to return just a minute to the
10 discussion of the death penalty that you had with the Judge,
11 I have a question I'd like to follow up with you about that.

12 Is it my understanding that you recognize fully
13 that the jury is entitled only to determine the issue of guilt
14 or innocence and should not be concerned at all with the
15 penalty?

16 A Yes.

17 Q Are you willing to fully honor that principle?

18 A To the best that I can say I am.

19 Q Could you tell us, Mrs. Jordan, if you can be
20 certain in your own mind that your hesitation about the death
21 penalty would not automatically prevent you from voting for a
22 First Degree Murder conviction no matter what the evidence?

23 A Could you repeat that? I didn't quite understand
24 your point.

25 Q Yes. Could you assure us that, in your own

1 mind your hesitation, or reluctance about the death penalty,
2 would not interfere with your voting for a First Degree Murder
3 verdict if you felt the evidence was strong enough to justify
4 the conclusion that the defendant committed First Degree
5 Murder?

6 A If the evidence proved beyond a reasonable doubt
7 that he committed a First Degree Murder I would have to go
8 along with it, yes.

9 Q You feel that you could fully put the penalty
10 question out of your mind?

11 A Yes, I could.

12 Q Realizing that it is not the jury's function?

13 A Yes. Could I ask a question?

14 THE COURT: Yes, I think you should feel free to ask
15 a question.

16 THE WITNESS: Who was responsible for the determination
17 of First Degree Murder here, second degree? Who decided this?

18 THE COURT: I will give you instructions instructing
19 you on the degrees on First Degree Murder and also the lesser
20 included offenses and distinction between them. It would be
21 entirely up to the jury to determine, under the law and the
22 evidence what the defendant is guilty of; whether it's First
23 Degree Murder, second degree, manslaughter, under the
24 instructions of the Court.

25 THE WITNESS: All right.

1 THE COURT: The jury makes the determination, the
2 Court gives you the instructions as to the distinction.

3 MR. THOMAS: Does that answer your question?

4 THE WITNESS: Yes.

5 Q BY MR. THOMAS: I think the "Jury" will
6 instruct you that -- I'm sorry, the Court will instruct you
7 that in order to convict the defendant, the case of First
8 Degree Murder must be proved beyond a reasonable doubt but not
9 to an absolute certainty. Would you require the State to
10 prove, in your mind, to an absolute certainty that the
11 defendant is guilty of First Degree Murder before you would
12 vote to convict?

13 A I would find it hard to believe that anything is
14 an absolute certainty. I don't believe that I need to have
15 it proved quite that far.

16 Q Also I think that the Court will instruct you
17 that a reasonable doubt means just that, a reasonable doubt
18 and not a fanciful or imaginary doubt. Do you have any
19 question in your mind that you could distinguish between
20 what was reasonable and what was fanciful in terms of doubt
21 as to the defendant's guilt?

22 A I don't know -- no, I have no question.

23 Q I'm sorry, I didn't hear your answer?

24 A I have no question.

25 Q You have no question?

1 A. No.

2 Q. Thank you. Do you feel that you can give the

3 State, as well as the defendant, a fair trial in this case?

4 A. Yes.

5 Q. You don't have any problem with our system of

6 law? Do you agree with it?

7 A. Not on all points but I don't think anyone really

8 does. I agree basically with the whole system, if I didn't

9 I would figure out some reason not to be here today.

10 Q. I see.

11 Do you watch programs on television dramatizing

12 the work of lawyers or courtroom situations?

13 A. That's just about all there is on TV. Yes, I

14 do.

15 Q. Do you have any preconceived notions about

16 matters of law as a result of watching these programs?

17 A. Yes.

18 Q. Would you tell me what they are, rough idea?

19 A. The Defense Attorneys always have an airtight

20 case -- or Prosecuting Attorneys always have an airtight case

21 and Defense Attorneys always prove the defendant is innocent

22 by proving someone else out in the courtroom is the murderer.

23 Q. Do you think that's realistic?

24 A. No.

25 Q. You would not be misled if things do not work

1 that way?

2 A. I should hope not.

3 Q. Have you recently read any books or articles about
4 law or lawyers?

5 A. No.

6 Q. Have you read any books or articles recently about
7 well-known trials?

8 A. No.

9 Q. Do you understand that as a juror you would be the
10 judge of the credibility or believability of the witnesses who
11 testify and if there is conflicting testimony the jury will
12 have to resolve the conflict? Do you have any problem with
13 that? You feel you would have any difficulty in making a
14 determination like that?

15 A. I feel I have a certain amount of ESP and in this
16 case I would have to rely on it.

17 Q. I don't wish to unnecessarily pry into your personal
18 affairs, Mrs. Jordan, but I hope you bear with me for just a
19 moment while I get a little background information.

20 Could you tell me where you were born?

21 A. Warden Hospital in Kellogg, Idaho.

22 Q. Have you lived here all of your life?

23 A. Except for being away at school, yes.

24 Q. What is your educational background?

25 A. Bachelor of Science and Sociology, semester into

1 my Master's in environmental science.

2 Q Do you have a religious preference?

3 A I would imagine just the universality of mankind.

4 Q You do not attend a regular denomination?

5 A No.

6 Q Do you know, or are you acquainted with any of the
7 attorneys appearing in this case?

8 A No.

9 Q And do you have any close friends or relatives who
10 have been associated with, or acquainted with, any of the
11 attorneys in this case?

12 A Not to my knowledge.

13 Q Have you or any of your close friends or relatives
14 had any legal troubles in criminal or civil lawsuits?

15 A I lost a case in small claims court once, that's
16 about as far as it goes.

17 Q What is your -- I notice that you were divorced
18 and you indicated that a moment ago. Was that a contested
19 matter? Did you go into court for that?

20 A No, it was -- we had the same lawyer as a matter
21 of fact. It was a very even-type thing, no problems.

22 Q Amicable kind of divorce?

23 A Yes.

24 Q What did your husband -- former husband do?

25 A He was a salesman for Nalley's Corporation.

1 Q Have you ever been a witness in a criminal case
2 before?

3 A Let's see. I was a witness last year in a case
4 of a stolen car and, let's see, the car was -- belonged to a
5 friend of mine and the friend was giving me a ride home and
6 while we were in a cafe it was stolen. Apparently one of the
7 defendants had said -- somebody had told him it was okay to
8 take the car so they called me to find out if it was me and it
9 wasn't.

10 Q I see. Did you appear for the State in that
11 case; is that correct?

12 A I guess so. I'm not sure.

13 Q Do you -- have you had any previous jury
14 experience?

15 A None.

16 Q And do you do volunteer work of any kind?

17 A Not really.

18 Q If the evidence in this case were to reveal that
19 the victims of the crime that's being tried here were very
20 unpleasant, repelling people, would you have any tendency to
21 believe that would excuse a murder, or reduce its seriousness?

22 A Well, I'm trying to reach a state of mind where
23 there's not one person in the world that I meet who is more
24 important, or more worthy of love than the next and I don't
25 think -- I haven't quite reached that state of mind yet, but I

1 don't think that the nature of the victim would affect my
2 decision in any way.

3 Q Have you ever discussed this particular case with
4 any person who offered an opinion that the defendant was either
5 guilty or not guilty?

6 A I refuse to discuss it with anybody.

7 MR. THOMAS: I see. Pass the juror for cause.

8 Thank you.

9 MR. ROBINSON: May I proceed, Your Honor?

10 THE COURT: Yes.

11
12 VOIR DIRE EXAMINATION

13 BY MR. ROBINSON:

14 Q Mrs. Jordan, have you -- either you or your
15 relatives or close friends, other than this car theft
16 situation, been victims of other crimes committed against them?

17 A No, I don't recall anything serious, no.

18 Q And you stated your religious feelings were the
19 universality of mankind?

20 A Yes.

21 Q And does that include a belief in a Supreme Being --

22 A Yes.

23 Q -- per se? Do you believe in God?

24 A Per se I believe you are God, I am God. Each
25 human being is a part of God and God a part of each human being.

1 Q All right. And conversely, do you believe in
2 Satan?

3 A I haven't really quite found a place for him yet.
4 I don't -- I haven't decided one way or the other in my own
5 mind. I can't deny or confirm the existence of Satan.

6 Q All right, Mrs. Jordan. You know yourself better
7 than anyone else in this courtroom knows you and in examining
8 yourself, your personality, your feelings, do you know of
9 anything that would tend to disqualify you, as you sit in this
10 case, as a juror?

11 A I can't think of anything, nothing. I've had two
12 and a half days to think about it in seriousness and I've tried
13 to search my soul for any reason one way or the other to just
14 make me think one way or the other and I've tried to maintain
15 a very open mind through the whole thing. I can't think of
16 anything which would render me unable to make a fair decision.

17 Q I notice on your questionnaire you have stated in
18 case of emergency notify Jack Etherton.

19 A Yes.

20 Q Is that some relative, father?

21 A Yes, that's my father.

22 Q That's your father?

23 A Yes.

24 MR. ROBINSON: We pass Mrs. Jordan, Your Honor.

25 THE COURT: Mrs. Jordan, we'll ask you, then, to step

1 back into the jury room and wait there until you get further
2 instructions.

3 THE WITNESS: Could I say one more thing?

4 THE COURT: Yes.

5 THE WITNESS: For the record, of course, since he did
6 ask me a question about my father, probably on the record I
7 should state that my father was drawn for jury duty also and
8 we have, both of us, made it a point not to discuss the case
9 with one another. Just so you'll know.

10 THE COURT: Good enough. Thank you.

11 MR. ROBINSON: May we have just a second, Your Honor.

12 THE COURT: Sure. We might just take -- I don't want
13 to take a very long recess, we are running out of time and I
14 think I'm going to require that we go tonight if we don't get
15 a jury. I'm not going to let this go into tomorrow so we
16 might have to have a night session.

17 We'll take a five-minute recess right now.

18 (Recess taken.)

19 THE COURT: The stand-by juror is number 81,
20 Frank L. Orazem.

21 Would Counsel have any objection if the next
22 stand-by juror, if not needed, could be the first alternate?

23 MR. ROBINSON: No objection, Your Honor.

24 MR. REMAKLUS: No objection.

25 MR. THOMAS: No objection.

1 THE COURT: All right, I'll direct the Clerk to draw
2 another name, then.

3
4 FRANK L. ORAZEM,
5 a prospective juror herein, having been first duly sworn, took
6 the stand and testified as follows:

7
8 VOIR DIRE EXAMINATION

9 BY THE COURT:

10 Q Mr. Orazem, I'm going to ask you a few questions
11 first and then each of the attorneys will want to ask you some
12 questions.

13 A Okay.

14 Q Everything we take up here has to be reported by
15 the Court Reporter sitting right here (indicating) so he needs
16 to hear your answers.

17 A Okay.

18 Q He can't write down a nod, so if you will answer
19 audibly to all the questions.

20 A Okay.

21 Q I want to visit with you for just a minute about
22 the procedure we're going to follow once the jury is fully
23 selected and we start taking evidence in the case and we get
24 on with the regular trial. At that point we're going to
25 sequester the jury; that's what we call it, now, this means

1 that the jury can't go home at recesses or in the evening.
2 They will be housed at a motel and we have made arrangements
3 at the Stardust to house the jurors there. They will take
4 their meals together in restaurants under the supervision of
5 the Bailiffs.

6 A. Okay.

7 Q. And this will go on until the trial is over.

8 A. Okay.

9 Q. Now, we don't know right now how long this trial
10 is going to last. We've estimated three weeks and that,
11 probably, is a reasonable estimate.

12 A. Yeah.

13 Q. We need to know right at the very beginning here
14 whether there's anything in your personal life, your home
15 situation, your work situation, that would make it impossible
16 for you to serve under these conditions or whether this would
17 create an extreme hardship for you. Now, we know it's going to
18 be inconvenient for all the jurors so we can't just talk about
19 convenience. But, if there is something in your situation that
20 creates a real serious problem, we'd like to know about it.

21 A. Well, I'm in a motel business, see, two of us which
22 run way back from '47 on, in Mullan, see. That's the only
23 inconvenience it would be.

24 Q. Is this a partnership?

25 A. Yes, partnership, just two of us together.

1 Q Is there any reason why your partner can't carry --
2 I know it wouldn't be convenient --

3 A Well, we're the only ones that are operating it
4 at the time, see.

5 Q You don't have any employees?

6 A No, no employees at all.

7 Q Have you talked to him about this possibility; to
8 see whether he'd be willing to do extra duty while you are on
9 the jury?

10 A Well, he would probably have to do it, I guess,
11 that's all. Be a little bit of a burden to him, be a little
12 more work.

13 Q Knowing the operation there, do you -- although it
14 probably -- nothing wrong with making him sort of share the
15 burden with you?

16 A That's it, we're -- two of us can, we can do that
17 a lot faster and get it done in time than it would take a
18 loner and, maybe, we couldn't finish through, but with two of
19 us we can do it pretty good. We can finish the units.

20 Q Knowing the business there, do you think it would
21 be possible for him to do it, though?

22 A Well, he could try it, that's all -- about the only
23 thing he can do.

24 Q Do you have any other problems?

25 A No -- well, one of us has to do the shopping, you

1 know, all the time or whatever comes up, you see. There has --
2 usually has to be two of us around if we need anything one of
3 us has to go get it and one has to stay there and take care of
4 the business.

5 Q You don't think -- do you think the problem is
6 serious enough that it will actually -- wouldn't actually close
7 down the operation; he'd keep operating it, I take it?

8 A No -- well, you see, there's always someone
9 coming -- truck drivers and we have got tourists, some certain
10 amount of tourists coming and they come in around, say,
11 4:00 or 5:00, sometimes later, and sometimes they come up way
12 late at night. So, there's got to be either one of us around
13 there. If my brother needs something then I have to go out
14 and get it for him or --

15 THE COURT: Well, how do Counsel feel?

16 MR. REMAKLUS: We have no objection to excusing him.

17 MR. ROBINSON: I'd stipulate, Your Honor.

18 THE COURT: All right, Mr. Orazem, we'll excuse you,
19 I think, under those circumstances.

20 THE WITNESS: Yeah.

21 THE COURT: Thank you for the time you spent here.

22 THE WITNESS: Yeah, that's the -- there's only two of
23 us operating it.

24 THE COURT: All right. You will be subject to call for
25 further trials, they won't be this long or under the same

1 conditions. The Jury Commissioner will call you if he needs
2 you.

3 THE WITNESS: I'll be available.

4 THE COURT: I'll ask you not to discuss the questions
5 with other members of the panel.

6 THE WITNESS: No, I won't.

7 THE COURT: All right.

8 The stand-by juror is number 45, Sharon K. Hill.

9 I'll ask the Clerk to draw another name.
10

11 SHARON K. HILL,

12 a prospective juror herein, having been first duly sworn, took
13 the stand and testified as follows:
14

15 VOIR DIRE EXAMINATION

16 BY THE COURT:

17 Q Mrs. Hill, I want to ask you a few questions and
18 then the attorneys will want to ask you a few. Everything we
19 say here has to be reported by the Court Reporter sitting here
20 (indicating) so you'll need to answer loudly enough so he can
21 hear you and get your answers down. He can't report a nod, so
22 you will need to answer audibly so he can hear your answers and
23 write them down, okay?

24 A. Okay.

25 Q Visit with you for a minute first about the

1 procedure we're going to follow when the jury is completely
2 selected and we start receiving evidence and get into that
3 phase of the trial.

4 When we reach that point the jury will be what
5 we call sequestered; which means the jurors won't be able to
6 go home during the recesses or in the evening. We're going to
7 house the jurors in the motel, we've already arranged for that
8 at the Stardust. The jurors will take their meals together at
9 restaurants under the supervision of the Bailiffs and this will
10 go on until the trial is concluded.

11 We don't actually know how long this trial will
12 last but we estimate about three weeks and that is, probably,
13 a reasonable estimate.

14 What we need to know right at the outset here is
15 whether there's anything in your personal life, your home
16 situation, work situation, that would make it impossible for
17 you to serve under these conditions or that would create an
18 extreme hardship. I know it's going to be inconvenient for all
19 the jurors so we're not talking about inconvenience, but
20 serious situations that it would create.

21 Do you have any kind of a situation like that?

22 A. None.

23 Q. You feel you could serve under these conditions?

24 A. Yes, I could.

25 Q. Turn to another subject, then.

1 Under our system of justice and philosophy of
2 criminal law a defendant in a criminal action is presumed to
3 be innocent until his guilt is established beyond a reasonable
4 doubt. Now, this puts the burden on the State to prove him
5 guilty beyond a reasonable doubt and has the effect of saying
6 that the defendant doesn't have to do anything to prove his
7 innocence. Later on in the trial when I give instructions to
8 the jury I will further define these terms and explain them in
9 more detail.

10 Of course, you understand that when all the
11 evidence is in and the jury has been instructed in the law and
12 retire to deliberate on the verdict, then the jury, of course,
13 will have to weigh the evidence and make a decision as to
14 whether the State has proved the case beyond a reasonable doubt
15 and vote on the issues of guilt or innocence.

16 You see, at this stage of the trial, before any
17 of this could happen in this principle I have explained to you
18 means that the defendant here, Mr. Creech, must be
19 considered innocent right at this point in the proceeding and
20 that will continue until his guilt has been established beyond
21 a reasonable doubt.

22 Is there any reason at all that you know of why
23 you couldn't give Mr. Creech the full benefits of this
24 principle at this time and consider him to be innocent?

25 A. I don't feel that he is innocent.

1 Q You don't feel that he is?
2 A No, I don't.
3 Q Is this a feeling you have about this particular
4 case or do you have any quarrel with that general principle?
5 A I think I've read too much about it, really, for --
6 Q So, it isn't the general principle you question?
7 A No.
8 Q Just this particular case?
9 A Yes.
10 Q Can you give me some of the facts that you --
11 purported facts, that you've heard about this case that makes
12 you feel this way?
13 A Well, I just -- I don't know, I just really think
14 that he probably is guilty, you know, just different things
15 I've read.
16 Q That's what we'd like to know; what those things
17 are that you remember reading.
18 A Well, I mean, they think that he has killed the
19 people and --
20 Q What people do you think?
21 A These two people here in Idaho and also I've
22 heard and, you know, that he is wanted in another state besides
23 this one.
24 Q He is wanted in another state besides this one?
25 A Yes, and hasn't he also led men to other places?

1 Q Well, have you heard that?
2 A Um-hmm.
3 Q That he has led people to other places?
4 A Um-hmm.
5 Q I see. Have these things you've heard, then,
6 caused you to form an unqualified opinion as to the guilt or
7 innocence of the defendant?
8 A I think so.
9 Q Would it put -- would you require him to come
10 forward and disprove these things and prove his innocence in
11 your present state of mind?
12 A Well, he would have to prove -- I mean, you know,
13 he would have to prove that he didn't do it.
14 THE COURT: I see.
15 MR. ROBINSON: I would challenge, Your Honor.
16 I'd like to approach the bench if the Court --
17 THE COURT: Yes.
18 (Unreported conversation between Court and Counsel.)
19 MR. ROBINSON: It was just a citation and I did that
20 in support of my challenge, in light of the last challenge;
21 listed an awful lot more questioning and interrogation by the
22 State and, as I see that Supreme -- U.S. Supreme Court case,
23 once an opinion held and, even though the Court comes back and,
24 say, "If I would instruct you to disregard -- "
25 THE COURT: I don't think we've had that situation.

1 MR. ROBINSON: All right, sir.
2 THE COURT: I'm going to grant the challenge.
3 MR. THOMAS: We don't resist, for the record.
4 THE COURT: All right. We appreciate your frankness,
5 Mrs. Hill, and we will excuse you.
6 THE WITNESS: Okay.
7 THE COURT: You will be subject to call on other cases.
8 The Jury Commissioner will contact you if needed.
9 Thank you for your time you've spent here.
10 The stand-by juror is Bonnie Jameson, number 54.
11 I'll have the Clerk draw another name.
12
13 BONNIE E. JAMESON,
14 a prospective juror herein, having been first duly sworn, took
15 the stand and testified as follows:
16
17 VOIR DIRE EXAMINATION
18 BY THE COURT:
19 Q Mrs. Jameson, I want to ask you a few questions
20 and then each attorney will want to ask you a few. Everything
21 we say here has to be written down by the Court Reporter so you
22 will need to answer loudly enough for him to hear. He can't
23 report a nod, so you will need to answer audibly so he can
24 get your answer down, okay?
25 A Okay.

1 Q I want to visit with you for a minute, please,
2 first, about the procedure we'll follow once the jury is
3 selected and start receiving evidence in the trial.

4 At that point we'll do what we call sequester the
5 jury; which means the jurors won't be able to go home at
6 recesses or in the evening. We have made arrangements to house
7 the jurors at the Stardust Motel, and take your meals at
8 restaurants under the supervision of the Bailiffs and this will
9 continue until the trial is over.

10 We don't know at this time how long this trial
11 will last, however, the best estimate we can make is about
12 three weeks and I think that's a reasonable estimate.

13 The thing we need to know right at the outset is
14 whether there's anything in your personal life, your home
15 situation, your work situation, involved in, that would make it
16 impossible for you to serve under these conditions or create an
17 extreme hardship. We know it's going to be inconvenient for
18 all the jurors, so we're not just talking about inconvenience.
19 But, if there is a very serious situation in your --

20 A There's none that I know of.

21 Q Okay. You feel you could serve under those
22 conditions, then?

23 A Yes.

24 Q Well, we'll move on to another subject, then.
25 Under our system of justice and philosophy of

1 criminal law, a defendant in a criminal action is presumed to
2 be innocent until his guilt is established beyond a reasonable
3 doubt. This puts the burden on the State to prove a defendant
4 guilty beyond a reasonable doubt and relieves the defendant of
5 any burden of proving his innocence, or coming forward with
6 any evidence to prove his innocence. Do you understand that
7 principle?

8 A. I do.

9 Q. Obviously you will reach a point in the trial,
10 after all the evidence is in and instructions have been given
11 to the jury, that the jurors will have to weigh the evidence
12 and make a decision under the instructions of the Court as to
13 guilt or innocence and whether the State has proved guilt
14 beyond a reasonable doubt. But, at this stage of the proceeding
15 and until this is proved beyond a reasonable doubt, this
16 principle means that Mr. Creech, the defendant here, must be
17 considered innocent.

18 Is there any reason at this time why you couldn't
19 give him the full benefits of this principle and consider him
20 to be innocent?

21 A. Well, I can't think of any.

22 Q. Have you read or heard anything about this case in
23 the newspapers or on radio or TV or conversations with other
24 people about the case?

25 A. The only thing I've read is when it first came out

1 in the paper, but, I don't know, as far as the name or anything,
2 I --

3 Q You don't associate --

4 A I generally don't have that much time to read the
5 paper anyway.

6 Q Do you have any memories as you sit here today of
7 any purported facts about the case or about Mr. Creech that
8 appeared in that article?

9 A No, not really; other than what you told us over
10 at the courtroom.

11 Q That's the only thing you really know about the
12 case is what I told you in court there the other morning?

13 A That's the only thing I can remember anyway.

14 Q That's about all we can test is what you can
15 really remember right now as you sit here and you don't have
16 any memory about any purported facts about the case or
17 Mr. Creech at this time, then?

18 A No, I really don't even remember where it was
19 supposed to have happened or --

20 Q Okay. And you have no other facts about it?

21 A No, not that I can remember.

22 Q All right. Let's turn to another subject, then.

23 Under our Idaho law, neither the jury nor the Judge
24 has any discretion in fixing the penalty to be imposed in a
25 First Degree Murder conviction. The legislature has done that

1 and taken that away from the jury and the Judge.

2 The legislature has provided that the death penalty
3 is mandatory and automatic on a conviction of First Degree
4 Murder. But, what that means is that the jury won't be voting
5 on the penalty, the Judge won't be -- have anything to do with
6 the penalty. The only thing the jury will be actually voting
7 on and considering is the issue of guilt or innocence of
8 First Degree Murder or any lesser degree of homicide; under
9 the instructions of the Court. You won't be voting on penalty.

10 What I need to know now is whether you have any
11 personal beliefs or feelings about the death penalty that would
12 prevent you from fairly considering the evidence and voting on
13 the issue of guilt or innocence.

14 A. I don't really think that's any --

15 Q. In other words, even though now this penalty would
16 follow a conviction of First Degree Murder, you feel you could
17 give the issue of whether the State has proved him guilty
18 beyond a reasonable doubt of that offense, a fair consideration
19 and weigh the evidence and make a decision on that issue?

20 A. I believe so.

21 Q. The division of responsibility in a trial such as
22 this, then, between the jury and the Judge; as we've established
23 is that the jury is the sole judge of the facts, the jury will
24 weigh the evidence, test the credibility of witnesses and
25 determine how much weight to give the credibility you give to

1 witnesses. The Court can't interfere with that decision at
2 all on the part of the jury.

3 The other side of the coin is the Court is
4 supposed to have the sole responsibility to determine the law.
5 The jury is supposed to accept the law as stated by the Court.
6 I think a lot of times the jurors probably find that the law
7 is a little different than they thought it was, maybe.
8 Sometimes they thought it was a bad law or they don't
9 particularly agree with it. But, still, under their oath and
10 this division of responsibility, the jurors are required to
11 take the law as the Court gives it to them and accept that.

12 Is there any reason why you couldn't do that?

13 A. Well, I don't think there is.

14 Q. As far as, you know, you found the law was
15 different than you thought it was, you had been misunderstanding
16 of the law, you could still accept the law as I give it to you?

17 A. Yes, I think I would.

18 Q. All right. Do you know of anything that would
19 prevent you from being a fair and impartial juror to both sides
20 in this case?

21 A. Well, no, because I don't know him or anyone that
22 he knows.

23 THE COURT: Okay. Counsel may examine.

24 MR. REMAKLUS: Thank you, Your Honor.
25

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q I notice on the questionnaire that you sent in, Mr. Jameson, that you said that you are a widow?

A Yes.

Q How long have you been a widow?

A Be seven years in December.

Q Um-hmm. And you still have two of the five children at home?

A Yes.

Q And you've made, or will make, the necessary arrangements for them to be taken care of if you are kept here?

A Yes.

Q Fine. Do you take any of the daily papers?

A Take the Kellogg Evening News.

Q I notice you said you didn't have too much time to read the papers, if I remember correctly.

A Right.

Q Do you take any other magazines in the mail?

A No, I don't.

Q Do you buy books at the book store or at the newsstand?

A No. My son does, but I don't.

Q Um-hmm. Do you get magazines at the newsstand?

A No.

1 Q Are you a television fan, Mrs. Jameson?
2 A Well, until about 9:00 at night I am.
3 Q I suppose you watch some of the shows that
4 portray lawyers and lawsuits and things like that; haven't you?
5 A A few.
6 Q Well, this may not be like those on the TV. You
7 don't expect that here, do you?
8 A No, I don't.
9 Q Fine. What is your religious preference?
10 A Methodist.
11 Q Do you go fairly regularly?
12 A No, I'm sorry to say I don't.
13 Q Um-hmm. Do you have any hobbies?
14 A Well, I used to have the hobby of sewing, but
15 not in the last seven years.
16 Q What kind of work do you do over at the Bunker?
17 A I work in the "cell" room at the zinc plant.
18 Q Um-hmm.
19 A It's hard to explain, really.
20 Q I've been up by the zinc plant, I know it's a
21 big place. Your husband, prior to his passing away, worked.
22 He was an outdoor worker?
23 A Yes, he worked in the woods.
24 Q Um-hmm. During the course of the trial, if you,
25 as a juror, will listen to the witnesses and if there's a

1 conflict in the testimony you are -- you, as a juror, have to
2 decide who you are going to believe. You think you have any
3 trouble doing that, making up your mind?

4 A. I don't really believe so.

5 Q. And the fact that there is a death penalty, you
6 don't think is going to interfere with your being objective
7 and making up your mind based on the evidence?

8 A. No.

9 Q. I realize that's difficult, but that's what we're
10 asking you to do; is listen to the testimony, look at the
11 exhibits and base your decision on that. You are willing to
12 do that; are you not?

13 A. Yes, I am.

14 MR. REMAKLUS: Pass the juror for cause, Your Honor.

15 MR. ROBINSON: May I proceed, Your Honor?

16 THE COURT: Yes.

17
18 VOIR DIRE EXAMINATION

19 BY MR. ROBINSON:

20 Q. Mrs. Jameson, have either your family or your
21 close friends, relatives, ever been a victim of a crime
22 committed against them?

23 A. Well, how would you mean that, really?

24 Q. Well, have they been a victim of some act against
25 them amounting to a crime, burglary --

1 A. Well, my son. My son got in a little
2 difficulty awhile back in a burglary. He was a miner.

3 Q. He was charged?

4 A. Well, it wasn't -- wasn't anything that went to
5 court or anything. It was settled between the people and the
6 parents.

7 Q. Um-hmm.

8 A. But, there was no question if he was guilty or
9 not guilty. He was.

10 Q. Other than that, what I was inquiring about,
11 Mrs. Jameson, is whether or not any of these people that
12 were included in that group that I told you were -- or
13 inquired about, suffered, someone making an assault against
14 them; wrong them in any way, passing bad checks on them.
15 Anything of this nature?

16 A. No.

17 Q. All right. And in your affiliation with the
18 church, would you answer this question for me. Do you,
19 yourself, believe in God?

20 A. Yes, I do.

21 Q. Do you believe that Satan exists?

22 A. Well, Satan or a place called hell; whichever.

23 Q. Have you heard any conversations or rumors about
24 witchcraft being practiced here in North Idaho?

25 A. Well, I heard there's supposed to be a bunch of

1 hippies around, but I didn't -- I really don't believe in
2 witchcraft.

3 Q All right. Does the mere fact that Mr. Creech is
4 held in custody, incarcerated, lead you to believe that he is
5 guilty just because he is being held?

6 A No, I don't think so.

7 Q Mrs. Jameson, you know yourself better than
8 anyone in this courtroom knows you and in examining your
9 personality, do you know of anything, whether we've asked you
10 or not, that would disqualify you as a juror to sit in this
11 case?

12 A No, I don't really.

13 Q You feel that you are unbiased, unprejudiced
14 and can provide a fair trial?

15 A Well, I think I could.

16 MR. ROBINSON: Pass Mrs. Jameson, Your Honor.

17 THE COURT: All right, Mrs. Jameson, we will ask you
18 to step back into the jury room, then, and wait there and not
19 discuss the questioning with the other jurors that come over.
20 Thank you.

21 THE WITNESS: Okay.

22 THE COURT: That completes the selection of the
23 regular jury. Also have this dilemma, at least I found it to
24 be a dilemma, when we reach this point, whether there is to be
25 alternate jurors.

1 Under the Statute, the Statute requires the Court
2 first to make a minute entry to reflect that the trial will be
3 a protracted one and there will be alternate jurors needed.

4 I make such a finding at this point and will have
5 that entered in the minutes; that the trial is likely to be
6 protracted and alternate jurors will be necessary.

7 The Statute provides that the alternate jurors
8 will be chosen immediately after the regular jury is impaneled
9 and sworn. This creates an extreme dilemma in a case like that
10 because once the jury is sworn, they can't separate. They have
11 to immediately be sequestered.

12 I'm wondering if Counsel will be willing to waive
13 that requirement and let the alternate jurors be chosen before
14 the regular jury is sworn and impaneled.

15 MR. ROBINSON: Defense so waives.

16 MR. REMAKLUS: Yes.

17 MR. THOMAS: Yes.

18 THE COURT: All right, the procedure I would propose
19 on this, I'll hear from Counsel if Counsel have any objections
20 or feel it isn't regular or proper; would be, then, to let our
21 stand-by juror be the first name drawn as an alternate and,
22 then, draw one additional name as a -- and reveal both names
23 to Counsel so you would know the two alternates and examine
24 them both for cause.

25 MR. REMAKLUS: That's agreeable.

1 THE COURT: And, examine for cause until we have two
2 jurors that have been passed for cause and then begin exercising
3 pre-emptory challenges and each side will have two pre-emptory
4 challenges. Any question about that procedure?

5 MR. ROBINSON: No questions.

6 MR. REMAKLUS: That's fine, Your Honor.

7 THE COURT: All right. I will advise Counsel that the
8 first stand-by juror we have is number 34, Ronald Gribble and
9 I'll direct the Clerk, then, to draw another name.

10 It's number 49, Billee Howard. That juror has
11 been excused, we'll have to draw another one.

12 Number 114, Frederick F. Townsend.

13 Counsel have any objection to having a stand --
14 having a stand-by juror for challenges for cause here?

15 MR. THOMAS: No, Your Honor.

16 MR. ROBINSON: No objection.

17 THE COURT: All right, draw a stand-by juror, then.

18 If it's all right with Counsel, I think we'll just
19 take a short recess before we proceed with picking the
20 alternate jurors. I would like to go over and explain to the
21 rest of the panel that we are going to go -- keep going until
22 we complete the selection. That's all I'll say to them; ask
23 the Bailiff to advise the jurors that are over here of the
24 same fact.

25 (Recess taken.)

1 THE COURT: Counsel ready to proceed, then?

2 MR. ROBINSON: Yes, Your Honor.

3 MR. REMAKLUS: Yes, Your Honor.

4 THE COURT: Okay, bring in Mr. Gribble.

5

6 RONALD F. GRIBBLE,

7 a prospective juror herein, having been first duly sworn, took
8 the stand and testified as follows:

9

10 VOIR DIRE EXAMINATION

11 BY THE COURT:

12 Q Mr. Gribble?

13 A Yeah.

14 Q Is that the way you pronounce it?

15 A Yeah.

16 Q I'm going to ask you a few questions first,
17 Mr. Gribble, and then the attorneys will each want to ask you
18 some questions. Everything we say here has to be reported by
19 the Court Reporter sitting right here (indicating) so he has to
20 be able to hear your answers and he can't take down a nod so if
21 you'll answer audibly so that he can hear your answer.

22 A Yes, sir.

23 Q I want to visit with you just a minute about the
24 way we're going to handle the jurors and the trial once we get
25 the selection of the jury complete and start taking evidence.

1 The jurors at that point will be what we call
2 sequestered; which means the jurors won't be able to go home
3 at the recesses in the evening, we'll house them in a motel.
4 We've made arrangements at the Stardust to do that; take their
5 meals together at restaurants under the supervision of the
6 Bailiffs and this will go on until the trial is over.

7 None of us know right now how long the trial will
8 take, we have made an estimate of three weeks and that's about
9 as reasonable as we can make of an estimate.

10 So, right at the outset we need to know if there's
11 anything in your personal life, your home situation, your work
12 situation, that would make it impossible for you to serve under
13 these conditions; whether this would create an extreme hardship.
14 We know it's going to be inconvenient for all the jurors so
15 we're not talking about just inconvenience. We need to know
16 if you've got any particular serious problems that you have?

17 A. No.

18 Q. You feel you could serve under these conditions?

19 A. Yes.

20 Q. All right. Go on to another subject, then.

21 Under our system of justice and our philosophy of
22 criminal law in this country, a defendant is presumed to be
23 innocent until his guilt is established beyond a reasonable
24 doubt. This places the burden on the State to prove him guilty
25 beyond a reasonable doubt and means that the defendant doesn't

1 have to come forward and do anything to establish his innocence.
2 Do you understand that --

3 A. Yes.

4 Q. -- that principle?

5 Of course, once the evidence is all in and
6 instructions on the law have been presented to the jury and the
7 jury is retired to deliberate on its verdict, then you will have
8 to weigh the evidence and make the decision under the law as to
9 guilt or innocence and whether the State has proved guilt
10 beyond a reasonable doubt. But, right at this stage of the trial
11 and until the defendant has been proved guilty beyond a
12 reasonable doubt, his -- this principle that I've explained
13 means that the defendant must be considered to be innocent.

14 Now, are you able at this time, as you sit here,
15 to give him the full benefits of this principle and consider him
16 to be innocent?

17 A. Well, I've read, you know, about the case in the
18 papers from time to time.

19 Q. Okay. Let me just, maybe, before we get into that,
20 I'll move on to that next. But, apart from this particular
21 case, do you have any quarrel with that general principle and
22 philosophy --

23 A. No.

24 Q. -- presumption of innocence? You accept that --

25 A. Yeah.

1 Q -- as a good principle; do you?
2 A Yes, I do.
3 Q All right. Okay, let's talk about this particular
4 case, then. You say you have read some things about the case
5 and heard about the case. We would like to know what you
6 remember. What we're doing is testing your memory, now, about
7 the things that you specifically remember you've read or heard
8 from any source about the case or about Mr. Creech.
9 A The only thing I've -- I haven't heard anything
10 about it, I've just read it in the community paper here from
11 time to time; that he was arrested, accused and that's --
12 Q That's, basically, what I explained to you in
13 court the other day; wasn't it?
14 A Yes, but I haven't -- not the last few days, I
15 mean, this has been since, oh, over the summer. There was an
16 article in there from time to time or something.
17 Q Do you have any specific memory of any purported
18 facts about the case or about Mr. Creech that -- which you
19 remember? All we can do is ask you what you remember. But, do
20 you remember any specific purported facts about Mr. Creech, or
21 the case, from what you've read in those stories?
22 A Just that he was accused of murder and that's --
23 that's the extent of it.
24 Q That's the extent of it?
25 A That's the extent, I think that's all that was

1 presented in the local papers.

2 Q Is there anything about -- just that much that
3 caused you to -- would keep you from considering him innocent
4 right now until you've heard evidence to consider him guilty
5 beyond a reasonable doubt?

6 Let me ask it a little different. Have you formed
7 an opinion, an unqualified opinion, as to his guilt or innocence
8 at this time; based on what you've read?

9 A No. I find the papers don't -- aren't the best
10 news source in the world.

11 Q Is there any other question you have, why you
12 couldn't consider him innocent right now and leave it up to the
13 State to prove that he is guilty?

14 A No, I don't think so.

15 Q You think you could accept that?

16 A I think so.

17 Q Under our Idaho law, Mr. Gribble, neither the
18 jury nor the Judge has any discretion as to the penalty to be
19 imposed for First Degree Murder. The legislature has passed a
20 law that's taken this completely out of the hands of the jury
21 and the Judge.

22 The legislature has provided that the death
23 penalty is mandatory on First Degree Murder convictions; which
24 means that the jurors wouldn't -- aren't, in a First Degree
25 Murder trial, involved in voting on the penalty and the Judge

1 isn't involved in fixing a penalty. All the jurors would be
2 involved in is voting on guilt or innocence of First Degree
3 Murder; or lesser-included offenses.

4 The thing I need to know, because of that state of
5 the law, is whether you have any personal beliefs or feelings
6 about the death penalty which would prevent you from fairly
7 deciding the issue of guilt or innocence under the instructions
8 of the Court?

9 A. I think we'd all think about it, pretty hard. I
10 would.

11 Q. I'm sure that's true.

12 A. No.

13 Q. You think, even though you know that is the law,
14 that you could still fairly listen to the evidence and
15 instructions of the law and weigh the issue of guilt or
16 innocence under those circumstances, make a finding in
17 accordance with your convictions on that, without regard to this
18 penalty?

19 A. Yes.

20 Q. In the division of responsibility between the jury
21 and the Judge in a trial like this, Mr. Gribble, the jurors
22 are the sole judges of the facts in the case and the credibility
23 of witnesses and weight being given to the evidence. The Court
24 can't interfere with the jury's decision in that regard in any
25 way.

1 On the other hand, the Court is the sole judge of
2 the law and instructs the jury on the law and the jurors are
3 supposed to accept the law as given by the Court. Occasionally
4 I think it happens when the Court instructs the jury on the law
5 and individual jurors might find that some instructions are
6 different than they thought the law was and maybe think it's a
7 bad law; something like that. Still, under the juror's oath
8 the jury would be required to accept the law as given by the
9 Court.

10 Any reason why you couldn't accept following the
11 instructions of the Court, even though you found some point that
12 might be different than you thought they were or should be?

13 A. I would say if I definitely didn't really believe
14 it, I couldn't do it.

15 Q. You feel --

16 A. Because I don't know that much about law.

17 Q. Well, I think that's the reason the law makes that
18 division. The Judge is supposed to know what the law is, that's
19 why the Judge is supposed to instruct the jury on that.

20 Do you think if you did find a principle that
21 was different than you thought it really was, or even if you
22 disagreed with some principle, believe that you still would
23 take my word for it that that was the law and follow and accept
24 it?

25 A. Well, if I did it wouldn't be fair to either the

1 defendant or the rest of the jury, in my own mind.

2 Q Well, you see, the entire jury will be under an
3 oath to accept the law as stated by the Court so, then, you will
4 all be in the same situation as being required, if you live up
5 to your oath, to accept the law as stated by the Court.

6 I'm not sure you'll run into any conflict, you see,
7 but the thing we need to establish is whether you can accept
8 the law from the Court and just like I can't interfere with
9 your decision of the facts, you are not supposed to interfere
10 with my decision of the law. You are not sure you can accept
11 that division of responsibility; is that what you are saying?

12 A Honestly, I don't think so, because we all have a
13 little different standards.

14 Q Do you have any particular points of law that, in
15 your mind at this time, that you might think you'll question?

16 A No, I don't have any points, but I don't know that
17 much about law.

18 Q Well --

19 A I wouldn't want to claim that I'm an expert on
20 knowing. I don't know anything about --

21 Q Perhaps I'm not explaining it very well, then. I
22 think that's the whole thing that I'm trying to get across to
23 you, Mr. Gribble. I'm supposed to be an expert on the law and
24 you are not, that's why I'm supposed to give you the law, see.
25 Since, as you say, you don't know the law, I'm wondering why

1 you don't feel you could accept it if I give it to you.

2 A. Well, I suppose I could. I have to say yes.

3 Q. I sort of feel like I've twisted your arm.

4 A. Well, I work for the Government and I've seen a
5 lot of experts and they're supposed to be in our field and they
6 have completely blown it. So --

7 Q. Well, if it helps you any, at least I don't know
8 about the experts in your field, but in my field I've got
9 five experts that if I make a mistake in the law they can tell
10 me so. That's the Supreme Court. Would that make you feel
11 better to know that five other Judges would look at my work
12 product and decide whether I'd made a mistake under the law?

13 A. They should have it in our field. Usually they
14 just change jobs.

15 Q. Well --

16 A. But, I would say yes, if you are --

17 Q. All right. Do you know of anything else that
18 would prevent you from being a fair and impartial juror to both
19 sides in this case?

20 A. No, I don't think so.

21 THE COURT: Counsel may examine.

22 MR. REMAKLUS: Thank you.

23

24

25

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q Mr. Gribble, how long have you been employed by the U.S. Forest Service?

A Oh, three years as a permanent and I worked for them off and on for four or five years.

Q Um-hmm.

A Other than Service time, logging and in mining.

Q Have you had some specialized training for your job?

A I've been sent to schools. I'm an equipment -- kind of a specialist for the District. I handle, oh, all equipment contracts, service contracts, things like that.

Q Did you go --

A And this is the field I'm into.

Q -- did you go to a Forestry School someplace?

A I went one year at North Idaho Junior College in Coeur d'Alene.

Q Um-hmm.

A In '64 and '65 I went to an automobile and diesel technical school for a year in -- well, for seven months in Laramie, Wyoming.

Q So, actually, you're not engaged in repair or operation of equipment, you are engaged in acquisition of it and contracting equipment and things like that?

1 A. Yes. But, I do some of the work on our own
2 equipment.

3 Q. Sure, I understand. What are your hobbies,
4 Mr. Gribble?

5 A. Fishing, hunting, bowling, basketball, football.

6 Q. Do you take the local papers?

7 A. Yes, I do.

8 Q. Do you take other magazines and you subscribe to
9 other magazines and things like that?

10 A. The only one I subscribe to would be Field and
11 Stream and I just subscribed to Outdoor Life.

12 Q. Um-hmm.

13 A. And there's a couple coin magazines, coin collections

14 Q. Yeah. Do you watch television?

15 A. Yes.

16 Q. You haven't got any preconceived ideas what a
17 lawsuit is supposed to be like from watching some of those
18 lawyer television shows, have you?

19 A. It's got to the point where I don't usually watch
20 any of that.

21 Q. So, you are not going to be disappointed in the way
22 we might act here as compared to the dramatization on television?

23 A. I don't think so.

24 MR. REMAKLUS: I don't think so either. Pass the juror
25 for cause, Your Honor.

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MR. ROBINSON: May I, Your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. ROBINSON:

Q Mr. Gribble, what is your religious affiliation?

A I was baptized Episcopalian.

Q Do you believe in God yourself?

A I do.

Q Do you believe that Satan exists?

A No, I don't think so.

MR. ROBINSON: Pass this juror for cause, Your Honor.

THE COURT: All right, Mr. Gribble, we'll ask you, then, to step back into the jury room and wait there for further instructions.

I'll ask you not to discuss the questioning here with any other jurors that come in.

THE WITNESS: Yes, sir.

THE COURT: Thank you.

Mr. Townsend is next, number 114.

1 FREDERICK F. TOWNSEND,
2 a prospective juror herein, having been first duly sworn, took
3 the stand and testified as follows:
4

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q. Mr. Townsend, I want to ask you a few questions
8 at first and then the attorneys will want to ask you a few.
9 Everything we say here has to be reported by the Court Reporter
10 sitting in that chair (indicating) and, so, you will have to
11 answer loudly enough for him to hear you and record your
12 answers. He can't get a nod, so if you will answer audibly
13 to the questions that are asked.

14 A. Yes, Your Honor.

15 Q. I want to visit with you just a few minutes about
16 the procedure we'll follow once the selection of the jury is
17 completed and the jury is sworn to try the cause and we start
18 receiving evidence.

19 At that point we'll do what we call sequester the
20 jury; which means the jurors won't be able to go home at recesses
21 or in the evening. The jurors will be housed in a motel, we've
22 made arrangements at the Stardust to do that. The jurors will
23 take their meals together at restaurants under the supervision
24 of the Bailiffs and this will go on until the trial has ended.

25 None of us know right now how long the trial will

1 last, our estimate is three weeks and that's, probably, about as
2 close as we can come right now.

3 We are wondering at the outset whether there's
4 anything in your personal life or your home situation, work
5 situation, that would make this impossible for you to serve
6 under these conditions and work an extreme hardship on you. We
7 know it won't be convenient and won't be convenient for any of
8 the jurors. So, we don't ask you in terms of convenience, but
9 in terms of real serious, severe problems that might create in
10 your life.

11 Anything that would prevent you from serving under
12 these conditions?

13 A. There is a question of health, maybe I shouldn't
14 say "health" but something that just came to mind in the last
15 day or two. I had a gall bladder attack some weeks ago and
16 during the course of this they found I also had diabetes and
17 the doctor, at the time, felt that this could be controlled and
18 would be no problem serving on a jury. Now, this is the type --
19 I take no insulin and exercise. Apparently older-aged -- I mean,
20 it's not a thing that came on early in life. Lots of exercise,
21 just the last three days, has caused the effects of this to
22 show. I wish the Court to be advised of this. I don't know
23 what --

24 Q. Upset the balance, by not exercising?

25 A. I think that's it. It's just a pill and I don't

1 know how -- what type of effect it would have, but I felt the
2 Court should be aware of this.

3 Q That's the kind of thing we wanted to learn about.
4 I don't know what the regimen would be, it -- I'm sure all the
5 jurors would want to get a little exercise and I don't know how
6 vigorous the Bailiffs will want to take them out and march them
7 around and get some exercise, maybe some of that, maybe all the
8 jurors wouldn't want to get as much as you need. That might
9 be the problem.

10 What we want to do, Mr. Townsend, if you feel
11 there's any risk at all here why, we would want not to create
12 any hardship for you or risk for you.

13 Probably you need to be the judge of that if you
14 feel there is, why, I'm sure Counsel will want to excuse you.

15 A I don't really know what the risk would -- I doubt
16 that it would be severe because I wasn't even aware of it until
17 they were taking these other tests, you know, and --

18 Q What have been the effects you felt here this
19 last couple of days, just being inactive?

20 A Only in the sugar test in which has shown an
21 increase because of lack of exercise.

22 Q If this flared up, is there -- see, there wouldn't
23 be anything to preventing you from sending a message out to
24 your doctor that you needed some medication and having the
25 medication come in to you.

1 A. I appreciate this.

2 Q. This could be done if you felt that would relieve

3 the problem, health problem. Do you think that could control it

4 or don't you know that?

5 A. I don't know that, Your Honor.

6 MR. ROBINSON: I'd stipulate, Your Honor.

7 MR. REMAKLUS: Yeah, Mr. Townsend has some very fine

8 qualifications as a juror but I think we should excuse him under

9 these conditions.

10 THE COURT: I think we shouldn't take any risk about

11 this, Mr. Townsend, so we appreciate your bringing it to our

12 attention and we'll excuse you, then, for further service.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: You will be on call for further trials if

15 contacted by the Jury Commissioner. We appreciate very much

16 the time you spent here.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: The stand-by juror is 112, that's

19 Betty J. Thatcher.

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1 BETTY J. THATCHER,
2 a prospective juror herein, having been first duly sworn, took
3 the stand and testified as follows:
4
5 VOIR DIRE EXAMINATION
6 BY THE COURT:
7 Q Mrs. Thatcher?
8 A Yes.
9 Q I want to ask you a few questions first and then the
10 attorneys will want to ask you a few. The Court Reporter needs
11 to write down all your answers and my questions, so we will
12 have to speak loudly so he can hear us.
13 A Yes, sir.
14 Q He can't get a nod, so if you will answer audibly
15 to all the questions.
16 A All right.
17 THE COURT: Excuse me just a moment while we take care
18 of -- we should draw a stand-by juror so we'll do that at this
19 time.
20 (Brief delay.)
21 Q BY THE COURT: I want to visit with you just a
22 minute, Mrs. Thatcher, about the procedure we'll follow once
23 the jury is completely selected and sworn to try the cause and
24 we start taking evidence in the case. At that point the jury
25 will be sequestered; which means that the jury won't be able to

1 go home at recesses or at night. We will house the jurors in
2 a motel and they will eat in restaurants under the supervision
3 of the Bailiffs. This will last for the duration of the trial.

4 The problem is, we don't know exactly how long
5 this trial is going to take. At this time our best estimate
6 is three weeks and that's about as close as we can come,
7 probably.

8 We'll need to know right at the outset here before
9 we take time with other matters whether there's anything in
10 your personal life, your home situation, your work situation,
11 that would prevent you from serving under these conditions or
12 work an extreme hardship on you. We know it's going to be
13 inconvenient for all the jurors so we can't talk just about
14 inconvenience. But, if there is a severe problem --

15 A. No, sir, there wouldn't be a hardship.

16 Q. You feel you could serve under these conditions,
17 then?

18 A. Yes, sir.

19 Q. All right. Move on to another subject, then.

20 Under our philosophy of criminal law and system of
21 justice in this country, a defendant is, in a criminal action,
22 is presumed to be innocent until his guilt has been established
23 beyond a reasonable doubt and this puts the burden on the State
24 to prove him guilty beyond a reasonable doubt. It means, on
25 the other hand, that the defendant doesn't have to come forward

1 with any evidence to prove his innocence. He doesn't have to
2 prove his innocence.

3 Of course, once the evidence is presented to the
4 jury and the jury is instructed by the Court and the argument
5 of attorneys, they are required to deliberate on the verdict,
6 then they will have to make a decision on guilt or innocence
7 under the law that the Court has given them and will have to
8 weigh the evidence and decide whether guilt has been established
9 beyond a reasonable doubt. But, you see, we are at a point
10 where none of this has happened and what the principle means
11 is, right now and until the defendant is proved guilty beyond a
12 reasonable doubt, Mr. Creech must be considered innocent.

13 Now, is there any reason that you are aware of
14 right now that you can't give him the full benefits of this
15 principle and consider him to be innocent?

16 A. No, sir.

17 Q. Have you read or heard anything about this case in
18 the newspapers or radio or TV or conversations with people?

19 A. You mean recently?

20 Q. Any time.

21 A. No, some time ago, several months ago I read where
22 there was to be a murder trial in Southern Idaho and that they
23 requested a change of venue and that Wallace was being considered.
24 I really didn't pay any attention.

25 Q. In -- did any of these stories you read at that

1 time, do you remember right now any purported facts about that
2 case or about Mr. Creech, the defendant?

3 A. No, I really didn't pay too much attention.

4 Q. You are saying, then, that as you sit here today
5 you just don't have any knowledge about the case at all?

6 A. No.

7 Q. Other than what I may have told you the other day
8 in court?

9 A. No.

10 Q. Under our -- excuse me.

11 THE COURT: We've lost contact with the Courthouse, we
12 have to send runners across now. Can't you call on the phone
13 any more?

14 (Brief delay.)

15 Q. BY THE COURT: Turning to another subject,
16 Mrs. Thatcher, under our Idaho law neither the jury nor the
17 Court has any discretion as to the penalty to be imposed in a
18 First Degree Murder -- on a First Degree Murder conviction.
19 The legislature has taken that completely out of the hands of
20 the jury and the Judge.

21 The legislature has made this decision itself and
22 the legislature has provided for an automatic, mandatory
23 death penalty for First Degree Murder; which means that if the
24 defendant is convicted of First Degree Murder the death penalty
25 follows automatically and mandatory.

1 Of course, this means that you will know this as
2 you deliberate but, still, you will not be voting on the penalty
3 at all. All you'll be voting on is the issue of guilty or
4 innocence under the instructions of the Court and determine
5 whether the State has proved guilt beyond a reasonable doubt.

6 What we need to know is whether you have any
7 personal beliefs or feelings about the death penalty that --
8 know of its existence, that would prevent you from fairly
9 considering the evidence and the law and fairly determining
10 this issue of guilt or innocence?

11 A. No, I don't believe it would influence me.

12 Q. You feel, even though you know that if you vote
13 for conviction that a death penalty has been provided by the
14 legislature, that you could still weigh the evidence and make
15 an independent decision on the issue of guilt or innocence?

16 A. I believe I could, sir.

17 Q. I want to just explain to you a division of
18 responsibility between the jury and the Judge in the trial.

19 The jury is the sole judge -- the jurors are the
20 sole judges of the facts of the case and sole judges of the
21 credibility of witnesses and the weight to be given to the
22 testimony and the evidence and the Judge can't interfere with
23 that at all.

24 On the other hand, the Judge is the sole judge of
25 the law and the jurors are supposed to receive the law from the

1 Court and, even under their oath they are supposed to accept that
2 as the Court gives it to them.

3 I'm sure occasionally jurors, when they read the
4 law, or receive it from the Court, find that there's something
5 a little different than they thought the law was, or, perhaps,
6 than they think it should be. But, in spite of that, under
7 their oath they are still supposed to accept those instructions
8 that the Court gives to them. Do you feel you could do that?

9 A. Yes, I do.

10 Q. Do you know of anything that would prevent you
11 from being a fair and impartial juror to both sides in this
12 case?

13 A. No, I don't know of anything.

14 THE COURT: Counsel may inquire.

15 MR. THOMAS: Thank you, Your Honor.

16
17 VOIR DIRE EXAMINATION

18 BY MR. THOMAS:

19 Q. Mrs. Thatcher, if you felt in this case -- if you,
20 as a juror, felt that the evidence showed beyond a reasonable
21 doubt in your mind that the defendant was guilty of murder in
22 the first degree, would the death penalty be any deterrent to
23 your voting to convict him?

24 A. No.

25 Q. So, you are willing to concentrate on the

1 determining of the issues of guilt or innocence and not
2 consider the penalty; is that correct?

3 A. Right.

4 Q. You feel that you can give the State as well as
5 the defendant a fair trial in this case?

6 A. I feel that I could, yes, sir.

7 Q. Do you watch any programs on television that appear
8 regularly where courtroom scenes are dramatized, or lawyers'
9 work is portrayed?

10 A. Oh, used to watch Perry Mason.

11 Q. You work as a secretary in a legal firm; don't
12 you?

13 A. I have. I'm not employed at the present time.

14 Q. I see.

15 A. I have been a secretary.

16 Q. You know about the law, that things don't usually
17 work the way they do on television?

18 A. Right, right.

19 Q. Have you recently read any books or articles dealing
20 with the law or the legal profession?

21 A. No.

22 Q. Have you read any books recently, or articles,
23 concerning well-known trials?

24 A. No.

25 Q. You understand, do you not, that as a juror you

1 would be the judge of who to believe in the trial among the
2 witnesses in case there's conflicting testimony?

3 A. Right, yes, sir.

4 Q. You think you'd have any problem doing that?

5 A. No, sir.

6 Q. The Court has mentioned in preliminary remarks to
7 you the reasonable doubt standard and I believe the Court will
8 instruct you later in the trial that standard of reasonable
9 doubt which will acquit the defendant is just that, a
10 reasonable, not imaginary or fanciful, doubt. As a juror it's
11 up to you to make that determination in your own mind what is
12 reasonable and what is not.

13 Do you feel any confusion about the difference
14 between a reasonable doubt and an imaginary or fanciful doubt?
15 Do you think you could tell the difference?

16 A. Yes.

17 Q. I don't want you to think that I'm prying
18 unnecessarily into your personal affairs, bear with me for a
19 moment because I do need to get some background information
20 about you.

21 Where were you born, Mrs. Thatcher?

22 A. Lincoln, Nebraska.

23 Q. And how long have you lived here in Idaho?

24 A. About 30 years.

25 Q. Has that --

1 A. Thirty-five.
2 Q. Has that always been in this county?
3 A. Yes, sir.
4 Q. What is your educational background?
5 A. High school.
6 Q. High school?
7 A. Completed high school.
8 Q. Have you taken any postgraduate courses of any
9 kind?
10 A. No, I've been a civil service employee and, then,
11 in the legal field the last 15 years.
12 Q. I see. And what is your religious preference?
13 A. Protestant.
14 Q. Do you attend church on a regular basis?
15 A. Yes, sir.
16 Q. Do you have any grown children?
17 A. I have two boys grown.
18 Q. They are not living in your home at the present
19 time?
20 A. No.
21 Q. What occupations do they pursue?
22 A. Parson?
23 Q. Your sons, what occupations do they have?
24 A. One is a miner and the other is a barber, stylist.
25 Q. I see. Do you know any of the attorneys in this

1 case ---

2 A. No.

3 Q -- personally?

4 A. No, sir.

5 Q Do you know whether any of your close friends or

6 relatives know any of the attorneys?

7 A. No.

8 Q Have you or any member of your family or close

9 friends or relatives had any legal troubles in criminal or

10 civil lawsuits?

11 A. My oldest boy's had traffic troubles.

12 Q Would that cause you to feel any bias against the

13 State in this case?

14 A. Oh, no, no.

15 Q Have you ever been a witness in a criminal case

16 before?

17 A. No, never have.

18 Q Have you ever had any jury experience before?

19 A. Never.

20 Q Do you do any volunteer work of any kind?

21 A. Well, I used to when I had more time. I was in

22 the PTA and little league and things like that.

23 Q If it turned out that the victims in this case

24 were very unpleasant people, bad men, would that tend to make

25 you believe that murder was in any way justified, or was less

1 serious because of the victims' bad character?

2 A. No.

3 Q. Have you ever discussed this case with anybody who
4 expressed an opinion that the defendant was either guilty or
5 not guilty?

6 A. No. Never discussed it.

7 MR. THOMAS: Pass the juror for cause, Your Honor.

8 MR. ROBINSON: May I proceed?

9 THE COURT: Yes.

10

11 VOIR DIRE EXAMINATION

12 BY MR. ROBINSON:

13 Q. Mrs. Thatcher, what denomination of the Protestant
14 faith are you?

15 A. United Church of Christ congregation.

16 Q. Are you a regular attender at your church?

17 A. Yes.

18 Q. Do you do any church work?

19 A. No, I've been asked to join a group, but I haven't
20 as yet.

21 Q. Do you believe in God?

22 A. Yes, I do.

23 Q. Do you believe in the existence of Satan?

24 A. No.

25 Q. Have you heard any of the conversations, rumors,

1 about witchcraft being practiced here in Silver Valley,
2 Shoshone County?

3 A. No.

4 Q Hasn't come up in your conversations that you've
5 been involved in?

6 A. No, sir.

7 MR. ROBINSON: Pass for cause, Your Honor.

8 THE COURT: Mrs. Thatcher, we'll ask you, then, to
9 go back into the jury room and remain there until you get
10 further instructions from the Court. Don't discuss the
11 questioning here with any other members of the panel that come
12 in.

13 THE WITNESS: All right.

14 THE COURT: State's first pre-emptory.

15 MR. REMAKLUS: Just one moment, please, Your Honor.

16 THE COURT: Stand-by juror is number eight,
17 Alvin J. Buchtel.

18 I'll have the Clerk draw another name.
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ALVIN J. BUCHTEL,
a prospective juror herein, having been first duly sworn, took
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q Mr. Buchtel, I want to ask you a few questions
first and then the attorneys will each want to ask you some
questions. Everything we do here has to be reported by the
Court Reporter who is sitting right here (indicating) so it
will be necessary for you to answer loudly enough for him to
hear you and also he can't get a nod, so if you will answer
loudly whenever questions are asked, please. Okay?

A Okay.

Q I want to visit with you for just a minute about
the procedure we'll follow once the jury is selected and we
start receiving evidence in the case. When we reach that
point the jury will be what we call sequestered; which means
that you will be housed in a motel, won't be able to go home
at night or during recesses, you will eat in restaurants under
the supervision of the Bailiffs. Do you understand that?

A Won't bother me, just myself to look after at home
anyhow.

Q It wouldn't bother you a bit?

A No.

1 Q You can handle that kind of a procedure?

2 A Right.

3 Q The trial will probably last about three weeks,
4 that's our best estimate, but you can serve during that period
5 without any problem, then, under these arrangements?

6 A Yes.

7 Q Okay. Are you able to hear me all right,
8 Mr. Buchtel?

9 A Well, just a little bit hard of hearing but most
10 of the time I can.

11 Q I am, probably, the hardest one to hear in the
12 courtroom. Can you hear me all right?

13 A Yes.

14 Q When you were over in the other courtroom could
15 you hear me?

16 A I could up front, couldn't in the back of the room.
17 But, up by the railing I could.

18 Q Are you one of those that moved up?

19 A Yes.

20 Q I see. Actually, the witnesses will all be
21 testifying from the witness stand and the jurors will be over
22 in the -- those seats over there. Do you think if witnesses
23 speak up you can hear that far away?

24 A I think so.

25 Q Would you have any reluctance raising your hand

1 or speaking up if you can't hear some witness?

2 A. No, I don't.

3 Q. You will do that?

4 A. Yes.

5 Q. All right. Move to another principle here, then,
6 Mr. Buchtel.

7 Under our system of justice and philosophy of
8 criminal law a defendant is, in a criminal case, presumed to be
9 innocent until his guilt is established beyond a reasonable
10 doubt and the burden is on the State to do that.

11 A. Yes.

12 Q. This means he doesn't have to prove his innocence
13 or come forward with any evidence to prove that he's innocent
14 because the law cloaks him with this presumption of innocence.
15 Do you understand that?

16 A. Yes, sir, I do.

17 Q. Of course, once all the evidence is in and the
18 instructions have been given to the jury and the jury is
19 deliberating on their verdict, then you'll have to weigh the
20 evidence and make a decision on guilt or innocence and determine
21 whether the defendant has been proved guilty beyond a reasonable
22 doubt.

23 But, right at this point in the trial, before any
24 evidence has come in and until there is evidence to prove
25 guilt beyond a reasonable doubt, you understand that Mr. Creech

1 here has to be considered innocent?

2 A Right.

3 Q Now, is there any reason you can think of at all
4 why you couldn't give him the full benefits of that principle
5 and consider him innocent as he sits here today?

6 A No reason at all.

7 Q Have you read or heard anything about this case?

8 A No.

9 Q Radio, TV, newspapers or from conversations with
10 other people?

11 A No, I haven't.

12 Q Do you know anything at all about the case; other
13 than what I told you in court the other day?

14 A No.

15 Q Not a thing?

16 A No, not -- well, from -- came up, I read in the
17 newspaper where they transported him up from down south is all.

18 Q In that story do you remember any facts about this
19 -- the case, purported facts in this story, or purported facts
20 about Mr. Creech?

21 A No.

22 Q All you knew, it was a case being transferred, is
23 that it?

24 A Right.

25 Q Mr. Buchtel, under our law, a statute, the

1 legislature passed, neither the jury nor the Court has any
2 discretion as to the penalty to be imposed for First Degree
3 Murder. That means if a defendant is convicted of First Degree
4 Murder that the penalty the legislature has provided is
5 automatic.

6 Now, the legislature has provided a death penalty
7 for First Degree Murder and that's mandatory and automatic. Do
8 you understand that?

9 A. Um-hmm.

10 Q. This means that the jury won't have anything to
11 say about the penalty, the jury won't be voting on the penalty
12 and the Judge doesn't have anything to say about it. All the
13 jury will be determining and the only thing the jury will vote
14 on is guilt or innocence. You understand that?

15 A. I understand that.

16 Q. I'm wondering whether you have any personal
17 beliefs or feelings about the death penalty that would keep you
18 from fairly considering the evidence and weighing the issue of
19 guilt or innocence?

20 A. No.

21 Q. You feel that in spite of this death penalty that's
22 automatic and mandatory, that you could weigh the evidence and
23 vote fairly on the issue of guilt or innocence under the law as
24 the Court instructs you?

25 A. Yes, sir.

1 Q. All right. In the division of responsibility
2 between the Court and the jury, Mr. Buchtel, the jurors are
3 the sole judges of the facts and the weight to be given to the
4 evidence and the credibility of witnesses. The Court can't
5 interfere with that at all.
6 On the other hand, the Judge is the sole judge of
7 the law and the jurors are supposed to accept the law as given
8 by the Court. I'm sure occasionally jurors find the law is
9 different than they thought it was, or perhaps different than
10 they think it should be.
11 In spite of that they are still required to accept
12 the Court's instructions. Is there any reason why you
13 couldn't do that?
14 A. No, there isn't.
15 Q. You'd be willing to do that?
16 A. I would.
17 Q. Do you know of any reason why you couldn't be a
18 fair and impartial juror to both sides in this case?
19 A. No, I don't.
20 THE COURT: Counsel may examine.
21 MR. REMAKLUS: Thank you, Your Honor.
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VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q This is your first time as a juror, Mr. Buchtel?

A Yes.

Q What do you do over at Hecla?

A I'm a "sand man".

Q I mean --

A Filling stopes and --

Q I see. After the area has been mined?

A Right.

Q Yes, thank you. You've been here between six and seven years, is that right?

A Yes.

Q Where did you live before you came here?

A Down in Oregon, Pendleton, Oregon.

Q What kind of work did you follow down there?

A Working on a ranch for awhile down there, about three years.

Q What did you --

A Cattle ranch.

Q -- what did you do before that?

A Well, coal mining down in Colorado.

Q Your life work has, then, been mostly in the mines, is that right?

A More or less, yes.

1 Q Have you been divorced for quite a number of years?
2 A Well, since about '54.
3 Q Um-hmm. You have no children at all?
4 A No.
5 Q You happen to know any of the lawyers seated up
6 here?
7 A I do not.
8 Q And you hadn't heard anything about this case,
9 other than it was going to be here, is that it?
10 A That's right.
11 Q Now, as a juror during the course of the trial
12 you are going to sit here and listen to the evidence and, if
13 people tell conflicting stories you are going to have to decide
14 who you are going to believe and who you are not going to
15 believe.
16 A That's right.
17 Q You understand that, don't you, Mr. Buchtel?
18 A I do.
19 Q Do you think you have any difficulty in making up
20 your mind as to who is telling the truth and who isn't?
21 A I don't think too much.
22 Q All right. Now, if the State of Idaho, if we put
23 on the evidence here that convinces you beyond a reasonable
24 doubt that this man is guilty of First Degree Murder, will you
25 let that death penalty bother you in making your decision?

1 A. No, I don't believe it would.

2 Q. Have you or any member of your family or any of

3 your close friends had any difficulty with the criminal law?

4 A. (No audible response.)

5 Q. Have you ever been involved in a lawsuit?

6 A. One or two nephews, but been quite awhile back.

7 Q. There's nothing about that that would make any

8 difference to you now, is there?

9 A. No.

10 MR. REMAKLUS: We'll certainly pass Mr. Buchtel for

11 cause.

12 MR. ROBINSON: Pass, Your Honor.

13 THE COURT: All right, Mr. Buchtel, we'd ask you to

14 step back into the jury room and stay there until you are

15 further instructed. You will not discuss with other jurors

16 the things we have questioned you about.

17 The stand-by juror is number 56, Kathleen M. Jerome.

18 Draw another name, please.

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1 KATHLEEN M. JEROME,
2 a prospective juror herein, having been first duly sworn, took
3 the stand and testified as follows:
4

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q Mrs. Jerome, I'm going to ask you a few questions
8 first and then the attorneys will want to ask you a few.
9 Everything we say here has to be reported by the Court Reporter
10 so you will need to speak loudly enough for him to hear you and
11 he can't get a nod so if you will answer audibly to all the
12 questions, please.

13 A Okay.

14 Q I want to visit with you first about the procedure
15 we're going to follow once the jury is sworn and completely
16 selected and sworn to try the cause and start taking evidence
17 in the case. At that point we're going to do what we call
18 sequester the jury; which means the jurors can't go home at night
19 or during recesses and we'll house the jurors in a motel. These
20 arrangements have already been made at the Stardust Motel.
21 The jurors will take their meals together at restaurants under
22 the supervision of the Bailiffs. This will go on throughout
23 the trial until it's ended.

24 None of us know right now how long the trial will
25 take. Our best estimate is three weeks, and that's about the

1 best we can do as far as an estimate.

2 We need to know right at the outset before we take
3 time with other matters whether there's anything in your
4 personal life or your home situation, your work situation, that
5 would make it impossible for you to serve under these conditions,
6 or work an extreme hardship for you. I know it's going to be
7 inconvenient for all jurors so you can't just talk about
8 inconvenience. But, if there is a severe problem that this
9 would create for you, we need to know about it.

10 Is there some problem you'd have?

11 A. Yes.

12 Q. Can you tell us about it?

13 A. I have three small boys that won't have a babysitter.

14 Q. How old are they?

15 A. Two, four and seven.

16 Q. Two, four and seven? You don't have a regular
17 babysitter?

18 A. No.

19 Q. Do you have family here that could help you out
20 with that?

21 A. My sister-in-law has been doing it now.

22 Q. You feel that you couldn't ask her to do this for
23 three weeks?

24 A. Yes, she would, you know, but it's kind of
25 inconvenient for her too. If it was necessary I probably could,

1 you know, arrange something, but --

2 Q Would your sister-in-law do it? Has she
3 volunteered to do this for you?

4 A I didn't ask her about that part, but I am sure she
5 probably would.

6 Q Are the children comfortable with her? Do they
7 know her well enough so they don't get upset with her?

8 A Yes. There is one other problem. One of them
9 just got sick today.

10 THE COURT: I see. Well, what do Counsel --

11 MR. ROBINSON: I'd stipulate, Your Honor.

12 MR. REMAKLUS: We'd be willing to excuse Mrs. Jerome.

13 THE COURT: All right, that is quite a thing to take
14 a mother away from young children like that for that long, so
15 we will excuse you, then, Mrs. Jerome, and appreciate the time
16 you've spent here.

17 THE WITNESS: Okay.

18 THE COURT: You will be subject to call for other
19 trials if the Jury Commissioner calls you. Thank you for your
20 time. You could leave at this time if you want to.

21 All right, the stand-by juror is number 22,
22 Margaret Dahl.

23 She, apparently, isn't here yet.

24 (Brief delay.)

25 THE COURT: I'll ask the Clerk to draw another number.

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MARGARET C. DAHL,
a prospective juror herein, having been first duly sworn, took
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q Mrs. Dahl, I'm going to ask you a few questions at
first and then the attorneys will want to ask you a few questions.
Everything we say here has to be reported by the Court Reporter
sitting right here (indicating), so you will need to speak
loudly enough for him to hear you. Also, he can't get a nod
of the head, so if you'd answer audibly so he can hear you when
you answer the questions, okay?

A Yes, sir.

Q I want to visit with you first about the procedure
we'll follow with the jury once the jury is completely selected
and sworn to try the cause and start receiving evidence. At
that time we'll do what we call sequester the jury; which means
the jurors wouldn't be able to go home during recesses or in the
evening. We'll house them in a motel and arrangements have
already been made for the Stardust Motel to do this. Also they
will take their meals in the restaurants under supervision of
the Bailiffs during this time. This will go on during the entire
trial until it's ended.

We don't know how long the trial is going to last,

1 probably the best estimate that we can make is about three
2 weeks. Probably that's a reasonable estimate.

3 At the very beginning here, before we take time on
4 any other matters, we need to find out whether there's anything
5 in your personal life, your home situation or work situation
6 that you have -- that would prevent you from serving under these
7 conditions, or work an extreme hardship in your case. We know
8 it's going to be inconvenient for all the jurors so we can't
9 just talk about inconvenience. But, if there is a severe problem
10 it would create for you, we'd like to give you a chance to tell
11 us about it right now.

12 A. Well, I do. I deliver the Chronicle, I'm the
13 Chronicle dealer. I have seven children under me and right
14 now my daughter is doing it for me but she has a six-month old
15 baby and he is now contacting pneumonia. I'm afraid her doing
16 this -- I had a lady already set up, but she took off, so there
17 is nobody else to take over the deliveryship of the Spokane
18 Chronicle.

19 Q. You don't have any substitutes?

20 A. I have no substitute now because this lady is
21 taken off and I had her really trained and everything and she's
22 just --

23 Q. So, you are all by yourself?

24 A. All by myself. I have nobody except my daughter
25 that could do it. If she didn't have the six-month old baby

1 and she has no way of getting anybody to take care of the baby,
2 so --

3 THE COURT: Counsel have any --

4 MR. ROBINSON: Stipulate, Your Honor.

5 MR. THOMAS: No problem.

6 MR. REMAKLUS: Mrs. Dahl may be excused.

7 THE COURT: All right. Under those circumstances we'll
8 excuse you, Mrs. Dahl. You will be subject to call on other
9 cases if the Jury Commissioner calls. Thank you for your time
10 you spent here.

11 All right, the next juror is number 99,
12 Scott Shock.

13 MR. ROBINSON: Your Honor, during this break could
14 Mr. Creech be taken back so he can have his medication?

15 THE COURT: We will take a short recess.

16 (Recess taken.)

17 THE COURT: Ready to proceed?

18 MR. ROBINSON: Yes, Your Honor.

19 MR. REMAKLUS: Yes, Your Honor.

20 MR. THOMAS: Yes.

21 THE COURT: The juror's number is 99, Scott Shock.
22 Mr. Shock, just relax a minute, we'll be with you.

23 I'll direct the Clerk to draw another name.
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SCOTT B. SHOCK,
a prospective juror herein, having been first duly sworn, took
the stand and testified as follows:

VOIR DIRE EXAMINATION
BY THE COURT:

Q. Mr. Shock, I'm going to ask you a few questions
first, then the attorneys will each want to ask you some
questions. The Court Reporter has to report all these
proceedings so, he'll need to get your answers so you will have
to answer loudly enough for him to hear you and, then, he can't
get a nod of the head so you'll have to answer audibly to each
question that's asked.

I want to visit with you first just a little about
the procedure we'll follow when the jury is selected and sworn
to try the case and see if this is going to create any problems
for you as far as serving as a juror.

When we reach that point and start taking evidence
the jury will be sequestered; this means that the jurors won't
be able to go home at night, they will be housed in a motel,
take their meals together at restaurants under the supervision
of the Bailiffs, and this will go until the trial is over.

We don't know how long this trial will take; our
best estimate is about three weeks and that's just an approximatio
you understand?

1 The first thing we need to know, before we go into
2 any other things with you, is whether this will create any
3 real hardships for you, or make it impossible for you to serve
4 under these conditions because of anything in your personal life,
5 your home situation or work situation.

6 A. You want me to answer that now, right?

7 Q. Yes.

8 A. Not that I can think of right now.

9 Q. You could serve under those conditions, then?

10 A. Yes.

11 Q. Go on to another subject, then, Mr. Shock.

12 Under our system of justice and philosophy of
13 law a defendant in a criminal action is presumed to be innocent
14 until his guilt is established beyond a reasonable doubt and the
15 burden is on the State to prove him guilty beyond a reasonable
16 doubt.

17 This means he doesn't have to come forward and
18 prove anything about his innocence or try to establish his
19 innocence. The burden is on the State. Do you understand?

20 A. Well --

21 Q. Some question you have about that principle?

22 A. No, I just didn't understand it.

23 Q. All right. You understand that once the evidence
24 is all in and you've listened to all the evidence by both sides
25 and heard the instructions of the Court and retired to

1 deliberate, then, of course, the jury will have to vote on
2 guilt or innocence and determine whether the State has proved
3 the defendant guilty beyond a reasonable doubt. Do you
4 understand that?

5 A. Um-hmm, right.

6 Q. Of course, right now at this stage of the
7 trial there hasn't been any evidence at all. You understand?

8 A. Right.

9 Q. All right. This principle of law, as explained to
10 you, or philosophy, says right now the defendant is considered
11 innocent and that's the principle, he's innocent and that
12 continues with him until that's proved beyond a reasonable
13 doubt.

14 A. Okay.

15 Q. All right. This means that right now as he sits
16 here we have to consider him innocent under this principle. Now,
17 is there any reason at all you know of why you couldn't give him
18 the full benefits of this principle?

19 A. No.

20 Q. Have you read or heard anything about the case from
21 any source, radio, TV, newspapers, gossip, conversations with
22 people?

23 A. Somewhat before I filled out the papers, yes.

24 Q. I see. Can you tell us what you remember hearing
25 about the case?

1 A. Well, I heard that he was with the bikers and also
2 that there was some killings in Southern Idaho and what was read
3 in the newspapers.
4 Q. Do you remember anything else you read in the
5 newspaper?
6 A. I didn't read much about it.
7 Q. Any other purported facts, either about the case
8 or Mr. Creech that you've heard --
9 A. No.
10 Q. -- other than those things?
11 A. No.
12 Q. Has what you've heard caused you to form an opinion
13 as to Mr. Creech's guilt or innocence right at this time?
14 A. Yes, you might say I have no love for bikers.
15 Q. Okay. Without regard to whether Mr. Creech is a
16 biker, but just your own state of mind, looking at that and
17 telling us what that is, do you have an unqualified opinion as
18 to the defendant's guilt or innocence right now?
19 A. No, I don't.
20 Q. In other words, you are willing to follow this
21 principle of law I've stated to you and consider that he is
22 innocent until the State proved him guilty beyond a reasonable
23 doubt?
24 A. Right.
25 Q. You are willing to accept that?

1 A. Right.

2 Q. Turn to another subject, Mr. Shock.

3 Under our Idaho law, neither the jury nor the
4 Court has any discretion as to penalty to be imposed for First
5 Degree Murder. The legislature has passed a law making the
6 death penalty mandatory for First Degree Murder. That means
7 they've taken away from the jury and away from the Judge --
8 neither the Judge nor the jury has anything to say about it if
9 a defendant is convicted of First Degree Murder. The death
10 penalty follows automatically and is mandatory under that.

11 A. Right.

12 Q. Okay. The thing I need to know, of course,
13 recognizing then that the only thing you would vote on with the
14 other jurors in the jury room if you were selected as a juror,
15 is guilt or innocence in determining whether the State would
16 prove the case beyond a reasonable doubt and would not be
17 determining penalty.

18 I'm wondering whether you have any personal
19 beliefs or feelings about the death penalty which would interfere
20 with your determination of guilt or innocence, or prevent you
21 from fairly weighing the evidence and the law and then determine
22 just the issue of guilt or innocence?

23 A. That's not the point. I don't understand.

24 Q. Well, you understand as I've explained that as a
25 juror, if you are selected you wouldn't have anything to say

1 about the penalty.

2 A. Okay.

3 Q. The law just provides that automatically if the
4 defendant is convicted of First Degree Murder.

5 A. Okay.

6 Q. So, all you'll really be voting on is whether the
7 defendant is guilty or innocent, in other words.

8 A. Okay.

9 Q. If you should find that the State had met its
10 burden and proved the defendant guilty beyond a reasonable
11 doubt under the evidence and the law, would the fact that the
12 death penalty would follow automatically prevent you from voting
13 for a guilty verdict?

14 A. No.

15 Q. You would be able to do that under these
16 circumstances?

17 A. Right.

18 Q. Going to another principle, Mr. Shock.

19 The division of responsibility between the jury and
20 the Judge in the trial like this is pretty well established in
21 the law. The jurors are the sole judges of the facts and you'll
22 determine which witnesses to believe and what weight to give to
23 their testimony. The Judge can't tell you anything about that,
24 control that in any way.

25 On the other hand, the Judge is supposed to have

1 the -- supposed to be the sole judge of the law and the jurors
2 are supposed to accept the law from the Judge. So, you each
3 have a responsibility, I don't tell the jurors what the facts
4 are and the jurors aren't supposed to tell me what the law is.
5 You understand that?

6 A. Right.

7 Q. I'll give the law to the jurors in a form of
8 written instructions. I'm sure when the jury gets those
9 written instructions they will be quite long and be a number of
10 them. But, individual jurors will run into particular
11 instructions that maybe are different than they thought the law
12 was and maybe they think it's bad law and don't particularly
13 agree with it. But, still, under their oath, they are required
14 to accept the law as I have stated it to them, just like I have
15 to respect their decision on the facts.

16 Is there any reason why you couldn't accept the
17 law as I stated it to you?

18 A. If it's written in plain English and easy to
19 understand I could. But, if it's written in big letters, I
20 couldn't.

21 Q. Well, some of these concepts are really hard to
22 put into words, I will frankly state that to you right now,
23 Mr. Shock.

24 A. Okay.

25 Q. I'm not going to promise you it's going to be real

1 easy, but it will be as plain as I can make it, put it that way.

2 A. No, I've been to court a few times and I've had a
3 lot of trouble understanding and I believe I still would.

4 Q. You think you might have a real problem understanding
5 those instructions?

6 A. Right.

7 Q. They would be printed in two ways, Mr. Shock. In
8 the first place, I would read them orally, I would sit here and
9 just read through the whole instructions to the jury orally, then
10 the jury would be given a copy of them to take into the jury
11 room where they could pass around and read them themselves and
12 discuss them. But, I can't tell you that they will all be
13 simple. Some of them won't be. The concept of reasonable
14 doubt, the distinction between degrees of homicide, some of
15 those things are a little complex. You feel you might have a
16 problem with that?

17 A. Yeah, I'm a fairly simple guy.

18 Q. Well, that wouldn't be a problem unless you really
19 feel that you might have a hard time understanding.

20 A. I'd say I would.

21 Q. You say you would?

22 A. Right.

23 THE COURT: Counsel want to inquire on this point?

24 MR. ROBINSON: Defendant would stipulate, Your Honor.

25 MR. REMAKLUS: He may be excused.

1 THE COURT: We appreciate your frankness on this in
2 explaining this to us, Mr. Shock. Under the circumstances it
3 might create a difficulty for you, then, so we will excuse you.
4 We appreciate your time you spent here and waiting.

5 The stand-by juror is number 113,
6 Irvin C. Thompson.

7 I'll have the Clerk draw another name, then.

8
9 IRVIN C. THOMPSON,
10 a prospective juror herein, having been first duly sworn, took
11 the stand and testified as follows:

12
13 VOIR DIRE EXAMINATION

14 BY THE COURT:

15 Q Mr. Thompson, I want to ask you a few questions
16 first and then the attorneys will each want to ask you some
17 questions. The Court Reporter here has to take down everything
18 you say and what I say so you will need to speak loudly so he
19 can hear you.

20 A All right.

21 Q And not nod your head. So, if you will answer
22 audibly to all the questions, please.

23 I want to visit with you first just about the
24 procedure we'll follow as far as the jury, once it's completely
25 selected and we start receiving evidence. At that point we will

1 do what we call sequester the jury; which means the jury won't
2 be able to go home at night or any recess; that they instead
3 will be housed in a motel. We've made arrangements at the
4 Stardust to do this. The jurors will take their meals together
5 at a restaurant under the supervision of the Bailiffs and this
6 will continue until the trial is over.

7 Now, we don't know how long this trial is going to
8 last. We've made an estimate of three weeks and that's,
9 probably, about the nearest we can come and that is probably
10 a reasonable estimate.

11 The first thing we need to know is whether this
12 procedure will make it impossible for you to serve as a juror
13 or create an extreme hardship, either in your personal life or
14 home situation or work.

15 A. It makes it hard for me not being at home there
16 because my boy -- the wife goes to work in the mornings and we
17 are trying to buy our home and stuff and she had that
18 encephalitis but now she's able to work. We're trying to get
19 back on our feet and the boy is only 12 years old and I get him
20 off to school before I go to work.

21 Q. And she goes to work before he goes?

22 A. She goes to work about quarter after six.

23 Q. Is she still in somewhat ill or poor health?

24 A. She's coming along good, but we are trying to get
25 on our feet because when she had that encephalitis here in

1 Seattle, it cost me a little over \$6,000 there in nine weeks.

2 THE COURT: Counsel?

3 MR. ROBINSON: Stipulate, Your Honor.

4 MR. THOMAS: Yes, Your Honor.

5 MR. REMAKLUS: Yes.

6 THE COURT: All right, under those circumstances we'll
7 go ahead and excuse you, then, Mr. Thomas. I think that's a
8 valid excuse.

9 We appreciate your time you spent over here.

10 THE WITNESS: Thank you very much.

11 THE COURT: You may be excused at this time.

12 The next stand-by juror is number 66, that's
13 Ralph D. Lambert.

14 I'll ask the Clerk to draw another name.

15

16 RALPH D. LAMBERT,

17 a prospective juror herein, having been first duly sworn, took
18 the stand and testified as follows:

19

20 VOIR DIRE EXAMINATION

21 BY THE COURT:

22 Q Mr. Lambert, I noticed you turned your hearing aid
23 up. Maybe we'd better talk about that at the very first thing.

24 Do you have any problem hearing, or can you hear
25 all right with your aid?

1 A. Well, some people I can hear them pretty good and
2 some I couldn't.
3 Q. Have you had a problem hearing me?
4 A. Well, it's high-pitched sounds that I've lost my
5 hearing on.
6 Q. I see.
7 A. The high notes.
8 Q. When you were over in the other courtroom were you
9 able to hear me all right over there?
10 A. Yeah, I could hear you there.
11 Q. The jurors will be sitting in a box like this and
12 the witnesses will be testifying from the witness stand. Do
13 you think you could hear that far away all right?
14 A. Unless it's somebody that talks awful low.
15 Q. Would you be reluctant to raise your hand, speak up,
16 if you miss -- if you weren't hearing someone so we could ask
17 them to speak up?
18 A. Yes.
19 Q. Could you do that?
20 A. Yeah.
21 Q. All right. Everything we say here has to be taken
22 down by the Court Reporter, so if you will answer audibly to all
23 of the questions, loudly enough for him to hear you, please.
24 I want to visit with you about the procedure we
25 will follow when the jury is completely selected and sworn to

1 try the cause. When we start receiving evidence, at that point
2 the jurors will be what we call sequestered; this means you can't
3 go home during recesses or evening recess, the jurors will be
4 housed in a motel, take their meals in a restaurant under the
5 supervision of the Bailiffs. This will go on for the duration
6 of the trial.

7 The trial may last three weeks, that's our best
8 estimate though none of us know how long it will actually last
9 at this point.

10 We need to know outright, at the outset, if there's
11 anything in your personal life, your home situation, your work
12 situation, that would make it impossible for you to serve under
13 these circumstances, or work an extreme hardship. We know it
14 will be inconvenient, so we won't talk about that, but if there's
15 any severe problem in --

16 A Well, I just got my wife out of the hospital last
17 Tuesday.

18 Q Is there anyone --

19 A Well, I've got a couple daughters-in-law and
20 sons that live out close there but they've all got their families
21 to take care of.

22 Q So, there really wouldn't be anyone home with --
23 does she still need care?

24 A Well, she's not supposed to do much.

25 Q I see.

1 A. Heart condition.
2 MR. ROBINSON: I will stipulate, Your Honor.
3 MR. REMAKLUS: We'd agree that this man may be excused.
4 THE COURT: All right, under those circumstances I
5 think that's a valid reason to excuse you, Mr. Lambert. I'll
6 go ahead and excuse you, then. Thank you for the time you've
7 spent here waiting.
8 THE WITNESS: Do I go on home now?
9 THE COURT: Yes, you can go home.
10 THE WITNESS: Thank you.
11 THE COURT: The next stand-by juror is number 73,
12 Dale E. Magnus.

13 I'll ask the Clerk to draw another name.

14
15 DALE E. MAGNUS,
16 a prospective juror herein, having been first duly sworn, took
17 the stand and testified as follows:

18
19 VOIR DIRE EXAMINATION

20 BY THE COURT:

21 Q. Mr. Magnus, I want to ask you a few questions first,
22 then the attorneys will want to ask you some.

23 Everything we say here has to be reported by the
24 Court Reporter sitting here (indicating), so if you will speak
25 loudly enough for him to hear and answer the questions audibly.

1 He can't get a nod of the head. Okay?

2 A. Okay.

3 Q. I want to discuss just a minute with you the
4 procedure we'll follow once the jury is completely selected and
5 sworn to try the cause and we start taking evidence; to see if
6 it creates any problem with you if you were on the jury under
7 those circumstances.

8 Once we reach that point the jurors will be what
9 we call sequestered; which means the jurors will be -- jurors
10 would not be able to go home at night or during the recesses and
11 jurors will be housed in a motel. We made arrangements at the
12 Stardust Motel for this, take their meals together at
13 restaurants under the supervision of the Bailiffs and this will
14 go until the trial ends.

15 We don't know at this time how long this trial will
16 take. We've made an estimate of three weeks and that's,
17 probably, about as near as we could come to guessing how long it
18 will take.

19 We need to know right at the beginning here whether
20 there's anything in your personal life, your home situation or
21 work situation that would make it impossible for you to serve
22 under these conditions, or create an extreme hardship on you.
23 We know it's not going to be convenient for any of the jurors,
24 but that's why I don't talk in terms of convenience, but in terms
25 of severe hardships or extreme hardship. Do you have some

1 problem?

2 A. Well, I've got two little kids in grade school and
3 the kids in junior high and my wife works evenings and I've
4 tried to be around to take up the slack in the evenings.

5 Q. What's the youngest?

6 A. Well, they are in second and fifth grade, I think.
7 And two of them are in junior high.

8 Q. They would not be supervised in the evenings?

9 A. Yes, because my wife works at Barny's Market
10 there in the evenings and don't get home until 9:00.

11 Q. Do you have any family around, other relatives,
12 that could help or would help?

13 A. I suppose if we called them in, you know, they
14 could probably help out.

15 Q. Do you have someone who lives right near, close?

16 A. Yeah, within four or five miles. My wife's sister
17 could probably come in and help.

18 Q. Do you think that could be arranged?

19 A. Well, I suppose, you know, if you have to do
20 something you have to do it. But it sure would be kind of
21 inconvenient.

22 Q. What time does your wife get home at night?

23 A. At 9:30.

24 Q. What time do the children get home from school?

25 A. Four o'clock.

1 Q Four o'clock? You are ordinarily home by that time?

2 A Yes. Then, one of them takes band and one of them
3 goes to Confirmation class. I've got to pick them up and when
4 you've got four kids you have to go someplace every night to
5 pick them up from someplace.

6 Q Well, I guess we're in a situation with you,
7 Mr. Magnus, we're right on the border line since you could
8 handle it if you had to. I'm sure it wouldn't be convenient.

9 THE COURT: Counsel want to --

10 MR. ROBINSON: I stipulate.

11 MR. REMAKLUS: We would have no objection to excusing
12 Mr. Magnus.

13 THE COURT: All right, Mr. Magnus, we'll recognize this
14 as a hardship and go ahead and excuse you and appreciate this
15 time you've spent up here.

16 THE WITNESS: You bet.

17 THE COURT: You will be subject to call on further
18 trials by the Jury Commissioner if they need you. I don't
19 think they will be this much of a problem.

20 THE WITNESS: Now, I'm excused, is that --

21 THE COURT: Yes, you can go home.

22 THE WITNESS: Thank you, sir.

23 THE COURT: The stand-by juror is 116, N. K. Ward.

24 I'll have the Clerk draw another name.

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N. K. WARD,
a prospective juror herein, having been first duly sworn, took
the stand and testified as follows:

VOIR DIRE EXAMINATION
BY THE COURT:

Q Mr. Ward, I want to just ask you a few questions,
then the attorneys will ask you a few. Everything we say needs
to be taken down by the Court Reporter so if you will answer
loudly enough for him to hear you and he can't get a nod so if
you will answer audibly to all the questions.

A All right.

Q I want to visit with you just a minute about the
procedure we're going to follow once the jury is selected and
sworn to try this cause and start receiving evidence. At that
point we will sequester the jury, is what we call it. That
means that this jury won't be able to go home at night, they
will be housed in a motel, already made arrangements at the
Stardust Motel to do this, the meals will be taken in a
restaurant together and under the supervision of the Bailiffs
and this will go until the trial is ended.

We don't know how long, at this point, the trial
will take. We've made an estimate of three weeks and that's
about as close as -- that's, probably, a reasonable estimate.

Before we spend time on any other subject, we need

1 to know whether there's anything in your personal life, your
2 home situation or work situation that would make it impossible
3 for you to serve under these conditions, or create an extreme
4 hardship. Now, we know it's not going to be convenient so we're
5 not really talking in convenience but if there is a severe
6 problem we'd like to know about it.

7 A Well, I have a blood pressure problem that I have
8 to see a doctor once or twice a week.

9 Q You actually have to go to a doctor twice a week?

10 A For -- yes, I usually go once, I should go twice,
11 but I make it once.

12 Q And you are under constant care and treatment for
13 that?

14 A Yes, um-hmm.

15 MR. REMAKLUS: We have no objection.

16 MR. ROBINSON: No objection.

17 THE COURT: All right, we will excuse you from further
18 jury service for that reason, then. We appreciate the time you
19 spent here. You may be excused at this time.

20 The next number is 97, Curtis Schrader.

21 I'll have the Clerk draw another name.
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1 CURTIS D. SCHRADER,
2 a prospective juror herein, having been first duly sworn, took
3 the stand and testified as follows:
4

5 VOIR DIRE EXAMINATION

6 BY THE COURT:

7 Q Mr. Schrader, I want to ask you a few questions
8 first and then the attorneys will ask you a few questions. The
9 Court Reporter has to write down everything we say here, so you
10 will need to speak loudly enough for him to hear and also he
11 can't get a nod of the head, so if you will answer audibly to
12 each question, please.

13 A Okay.

14 Q I want to discuss with you just a minute the
15 procedure we'll follow when the jury is finally selected and
16 sworn to try the cause and start taking evidence. At that point
17 we do what we call sequester the jury, which means you won't
18 be able to go home at night, recesses, or at any time during
19 the recess. You will be housed in a motel, take meals together
20 at restaurants under the supervision of the Bailiffs and this
21 will go on until the trial is over.

22 We don't know at this point how long the trial will
23 actually last, our best estimate is about three weeks and that's
24 probably as close as we can come.

25 Then, before we take up with any other matters

1 with you, we need to know whether there's anything in your
2 personal life or home situation or work situation which would
3 make it impossible for you to serve under these conditions, an
4 extreme hardship. We know it's going to be inconvenient for all
5 the jurors so we don't just talk about convenience. But, if
6 there is a severe problem in your case we'd like to know what
7 it is.

8 A Yeah, I'm working at an out-of-state job over in
9 Montana. I was off work five months last year, be laid off
10 again pretty quick. I can't really afford to take the time off.
11 It's a seasonal job that I've got here.

12 Q What do you do?

13 A Driving logging truck.

14 Q I see. You feel by the time this service will be
15 over your work would be finished; is that what you are saying?

16 A Well, I'd be in trouble money-wise if I was to be
17 off work for that long.

18 Q Would this create such a severe problem money-wise
19 that you would be worrying about it and couldn't concentrate on
20 the jury service?

21 A Yeah, probably would.

22 Q Do you have dependents you are responsible for
23 supporting?

24 A Yes.

25 Q How many dependents do you have?

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A. Two.

THE COURT: Counsel have any --

MR. THOMAS: No objection.

MR. ROBINSON: No objection.

MR. REMAKLUS: No, Your Honor.

THE COURT: All right, we will excuse you, then,
Mr. Schrader, and thank you for the time you've spent and you
are excused.

The next juror is 47, Lillian S. Honeycutt.

I'll have the Clerk draw another name here.

LILLIAN S. HONEYCUTT,
a prospective juror herein, having been first duly sworn, took
the stand and testified as follows:

VOIR DIRE EXAMINATION

BY THE COURT:

Q. Mrs. Honeycutt, I will ask you a few questions first
and then the attorneys would have a few questions to get through.
The Court Reporter needs to write down everything that's said
so if you will answer loudly so he can hear you and make audible
answers. He can't get a nod of the head, okay?

A. (No audible response.)

Q. I want to discuss with you just quickly the
procedure we're going to follow when the jury is selected and

1 sworn and actually start taking evidence in the case. At that
2 point the jury will be what we call sequestered; which means
3 the jurors won't be able to go home at night or at recesses and
4 will be housed in a motel. We made arrangements at the
5 Stardust to do this; take your meals together at restaurants under
6 the supervision of the Bailiffs and this will go on during the
7 entire trial.

8 The trial may last three weeks, that's our best
9 estimate; although none of us know for sure right now how long
10 it will actually last.

11 Before we take time going through anything else
12 with you, we need to find out at the outset whether there's
13 anything in your personal life, your home situation or work
14 that would make it impossible for you to serve under these
15 conditions, or work an extreme hardship on you. We know it's
16 going to be inconvenient for all so we aren't just talking
17 about inconvenience. But, if it would create a severe problem
18 for some reason we'd like to know about it.

19 A. The only problem is I have recently filed for
20 divorce and if I was on the jury, proceedings would have to be
21 held up until I was free again.

22 Q. Well, is there any real reason why that couldn't
23 be done? Is it going to go as a default or has it been
24 contested?

25 A. No, it hasn't been contested.

1 Q So, any actual hearing, trial date, hasn't been
2 set?

3 A No.

4 Q Just a matter of waiting until the time runs on the
5 service of summons?

6 A The lawyer needs more information before it's
7 really filed real good, I guess. But, that's the only -- and
8 it's going on right now.

9 Q Other than that, you could handle the situation?

10 A Yes, I believe so.

11 Q This doesn't create any problem at home otherwise?

12 A No, I live alone now.

13 Q All right. I think, probably, you could handle
14 this situation if you had to so I think we'll go ahead and turn
15 to another subject, then.

16 Under our law, our system of justice and philosophy
17 of law, a defendant in a criminal action is presumed to be
18 innocent until his guilt is established beyond a reasonable
19 doubt. This places the burden on the State to prove him guilty
20 beyond a reasonable doubt and it means that the defendant has
21 -- doesn't have to prove anything, really. He doesn't have to
22 prove his innocence; you understand that? Of course, once the
23 evidence is all in and instructions of the Court have been
24 received and the jury is deliberating, then the jury will have
25 to weigh the evidence and make a decision in the case and vote

1 guilt or innocence and test the State's evidence against the
2 burden of proving him guilty beyond a reasonable doubt.

3 Right now as we sit here at this stage of the
4 proceedings there isn't any evidence and, so, this principle of
5 law I have explained to you requires that the defendant be
6 considered completely innocent at this point.

7 In other words, the jury waits until the proof is
8 in and, then, follows the instructions and weigh the evidence.
9 Is there any reason at all you know at this time why you
10 couldn't give Mr. Creech a full benefit of this principle and
11 consider him innocent?

12 A. No.

13 Q. Have you read or heard anything about this case,
14 conversation with other people, newspapers, radio or TV?

15 A. No.

16 Q. Do you know anything other than what you were
17 told in court the other day?

18 A. No.

19 Q. So, you haven't heard any purported facts about
20 this case or about Mr. Creech; other than what I told you?

21 A. No.

22 Q. Okay. One other principle you need to be aware of,
23 Mrs. Honeycutt. Our requirement of law, under our Idaho law,
24 neither the jury nor the Court has any discretion as to the
25 penalty to be imposed for First Degree Murder. Our legislature

1 has passed a law that fixes the penalty -- go ahead and take
2 your coat off, it is warm in here.

3 The legislature has fixed this penalty and taken
4 the discretion completely away from the jury and the Judge. The
5 legislature has provided the mandatory death penalty for
6 First Degree Murder; which means that anyone now convicted in
7 Idaho for First Degree Murder, the death penalty is automatic
8 and mandatory.

9 This means, of course, that the jury wouldn't be
10 asked to vote on the penalty and wouldn't be voting on the
11 penalty directly. But, the only thing the jury will be deciding
12 is guilt or innocence under the instructions of the Court.

13 The thing we need to know is whether you have any
14 personal beliefs or feelings about the death penalty that would
15 interfere with your fairly considering and weighing the
16 evidence and the law as to the charge of First Degree Murder?

17 A. The only thing I could say is I do hold life
18 precious and I wouldn't, possibly, have it on my conscience or
19 it would bother me for some time if I thought I had helped
20 destroy it.

21 Q. I'm sure this is a serious consideration, that's
22 why we wanted to discuss it with you, Mrs. Honeycutt.

23 You understand this particular -- initially, I
24 suppose you may consider this a rationalization, but,
25 technically, it perhaps is on the legislature's conscience

1 they are the ones that fixed the penalty and took it away from
2 the jury and Judge. But, of course, we all know that what I
3 have explained to you, if you vote for First Degree Murder and
4 find the defendant guilty of that, that this penalty would
5 follow, but it would follow because the legislature had fixed
6 the penalty and not because the jurors have voted for that penalty;
7 you understand that?

8 A. Yes, I understand.

9 Q. I guess the only way I can put the question to you
10 and in a way that we have to resolve it because you are the only
11 one that can search your mind and tell us the answer to this.

12 Do you think your concern about the death penalty
13 and personal feeling about it would simply prevent you from
14 considering the issue of guilt or innocence and finding the
15 defendant guilty under any state of the evidence or would you
16 feel that no matter how strong the case the State presented, you
17 still couldn't vote for First Degree Murder because of your
18 knowledge about this penalty that would follow?

19 A. No, I could go according to whatever the evidence
20 was.

21 Q. You feel you could, even though you would be
22 concerned about this and -- but you still feel that you could
23 weigh the evidence and the law and make a determination on
24 guilt or innocence?

25 A. Yes, I do.

1 Q All right. Any division of responsibility between
2 the Judge and the jury, Mrs. Honeycutt, it is the sole function
3 of the jurors to determine the facts. The jurors have to determine
4 what weight to give to the testimony of witnesses and what
5 weight the evidence -- what witnesses to be believed and not
6 believed and how much to be believed. The Court can't control
7 the jury at all in that or tell you how to decide those things.

8 A. Um-hmm.

9 Q. On the other hand, the Court's function is to
10 decide what the law is and instruct the jury as to the law and
11 the jury, just like I'm not supposed to -- can't control the
12 jury's decision as to the facts, the jury is supposed to accept
13 my decision as to the law and my explanation of the law.

14 The only problem I think that might arise in that
15 regard is, occasionally I'm sure jurors find that the law is
16 different than they thought it was or perhaps they think maybe
17 the law is wrong. Nevertheless, their oath as jurors would
18 require them to accept my instructions in the law, just as the
19 Judge has to accept the jurors' findings as to the facts.

20 Is there any reason you know of why you couldn't
21 accept my instructions as to the law?

22 A. No.

23 Q. You'd be willing to do that?

24 A. Yes.

25 Q. Do you know of anything, whether I've asked you or

1 not, that would prevent you from being a fair and impartial
2 juror to both sides in this case?

3 A. What was the question?

4 Q. Do you know of anything, whether I've asked --
5 anything else that I haven't asked you about that could keep you
6 from being a fair and impartial juror to both sides?

7 A. No.

8 THE COURT: Counsel may inquire.

9

10 VOIR DIRE EXAMINATION

11 BY MR. THOMAS:

12 Q. Mrs. Honeycutt, as the Court explained, there are
13 two things to consider in a First Degree Murder case. One is
14 the question of guilt or innocence and the other is the penalty.

15 You do understand, do you not, that the jury is not
16 responsible for the penalty and decides only the question of
17 guilt or innocence?

18 A. Yes, I understand.

19 Q. And are you sure in your own mind that you could
20 put aside any hesitation you might have about the death penalty
21 and vote to convict the defendant if you found that the evidence
22 showed beyond a reasonable doubt that he was guilty of First
23 Degree Murder?

24 A. I'm sorry, I didn't --

25 Q. If the evidence showed the defendant was guilty

1 beyond a reasonable doubt in your mind --

2 A. Yes, sir.

3 Q -- would you put aside your hesitation about the
4 death penalty and your reluctance to impose it?

5 A. Yes.

6 Q And vote to convict him of First Degree Murder?

7 A. Yes, I would.

8 Q You feel, then, that you can give the State, as
9 well as the defendant, a fair trial?

10 A. Yes.

11 Q Have you recently read any books or articles about
12 trials or law?

13 A. No.

14 Q Now, the Court mentioned to you the reasonable
15 doubt standards and I think the Court will instruct that, at a
16 later time, that there's a difference between reasonable doubt
17 and a fanciful or imaginary doubt and the kind of doubt which
18 will acquit the defendant must be reasonable. Do you feel that
19 you could distinguish between a genuinely reasonable doubt and
20 one which is drummed up or imagined?

21 A. Yes.

22 Q Could I ask you, Mrs. Honeycutt, where you were
23 born?

24 A. Pittsburgh, Kansas.

25 Q And have you been in Idaho for some time?

1 A Yes, I've been here for 26 years.
2 Q In this area all of that time?
3 A Majority of the time, yes.
4 Q I see. Do you have a religious preference?
5 A I belong to the Baptists, yes.
6 Q Baptist Church? Do you attend regularly?
7 A No.
8 Q Do you have any grown children?
9 A I have only the one 17-year old daughter.
10 Q I see. Is she employed anywhere at the present time?
11 A No, she recently married.
12 Q Do you know any of the attorneys in this case?
13 A I do not.
14 Q Do you know if any of your close friends or
15 relatives who know any of the attorneys?
16 A I don't believe so.
17 Q Apart from the divorce action that you are involved
18 in, have you or any members of your family or close friends
19 been involved in any legal difficulties; including either
20 criminal or civil lawsuits?
21 A Not that I know of.
22 Q Have you ever been a witness in a criminal case
23 before?
24 A No.
25 Q Have you had jury experience before?

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A. No.

Q. If the evidence demonstrates that the victims in this case were both rather unpleasant people, would that tend, in your mind, to excuse murder, or to reduce its seriousness?

A. No.

Q. Have you ever discussed this case with anyone who believed the defendant was either guilty or not guilty?

A. No.

MR. THOMAS: Thank you, Mrs. Honeycutt. Pass for cause, Your Honor.

MR. ROBINSON: May I proceed, Your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. ROBINSON:

Q. Mrs. Honeycutt, do you believe in God?

A. Yes, I do.

Q. Does Satan exist?

A. I'm not sure.

MR. ROBINSON: Pass for cause, Your Honor.

THE COURT: All right, you may step back into the jury room and just wait there for further instructions, Mrs. Honeycutt, thank you.

That completes the selection of the jury. I think, probably, the easiest thing to do would be to have the Bailiffs

1 bring the jurors over -- we have over in the jury room in the
2 Courthouse, all over here so we'd have them all assembled here
3 and, then, we'd read the pre-emptory excuses.

4 MR. ROBINSON: Your Honor, may I inquire about one matter
5 since we did go so long this evening, what's the Court's
6 planning to, maybe, delay a half hour in the morning to 10:00
7 to commence?

8 THE COURT: I'd be glad to if Counsel want.

9 MR. ROBINSON: Sure appreciate it.

10 THE COURT: We will stand in recess until we can get
11 all of the jurors in that jury room over there, over to here.

12 (Whereupon all prospective questioned jurors
13 entered the courtroom.)

14 THE COURT: Be seated. Ladies and gentlemen, I'm happy
15 to tell you we have the jury selected now so at this time I
16 am prepared to read the names of those jurors who have been
17 excused on pre-emptory challenges and seat the jurors who have
18 been chosen in the jury box.

19 Before I do that, I do want to express appreciation.
20 I'm sure I speak for Counsel and Mr. Creech and all of us for
21 your patience and your willingness to bear with us in this
22 matter. It's a very important matter in the trial, it's just as
23 critical as any part of the trial. It's been sort of a -- I am
24 sure, trying experience for you, but it's been important and you
25 performed an important function by being here and bearing with

1 us and being willing to be patient.

2 I want to just say, as a stranger, an outsider to
3 your county, that I've been impressed with the quality of
4 jurors; not that I didn't expect good jurors in Shoshone County,
5 but I feel we've had outstanding jurors to draw from and choose
6 from here and we appreciate it very much.

7 At this time I'm going to read the names of the
8 members of the panel that have been excused on the pre-emptory
9 challenges. You won't have to do anything, just take note as
10 your names are read, then I will read the names of the jurors
11 that will be seated as trial jurors in this case.

12 These jurors have been excused on pre-emptory
13 challenges: Virginia Gregory, Mrs. Dela Claypool, Arleigh Luoma,
14 Richard J. Sibert, Antonia Jaeger, Kathleen Orsburn,
15 Mrs. Brenda Stinson, Mrs. Wanda Kurt, Mrs. Ruth Daiker,
16 Mr. Jerry Adams, Linda Gust, Mr. Donald Crawford,
17 Mr. Harold Horine, Mrs. Betty Barr, Mrs. Stella Koole,
18 Mrs. Ellen Noonan, Miss Jacqueline Jordan, Mrs. Viola Coulter,
19 Mrs. Betty Thatcher and Mr. Alvin Buchtel.

20 If Mrs. Ester Everett would take Seat One on the
21 back row in the corner, please; Mr. Walter Nelson, Seat Two
22 next to her; Mr. Robert Powell, Seat Three; Mr. Frank Oberg,
23 Seat Four; Mr. Paul Mollendorf, Seat Five; Mrs. Daisy Kienholtz,
24 Seat Six; Mrs. Velma Canterbury will take Seat Seven, starting
25 at the other end again. Mr. Wayne Jacobs, Seat Eight next to

1 her; Mrs. Wanda Bennett, Seat Nine; Mrs. Bonnie Jameson,
2 Seat Ten; Mr. David Charles, Seat 11; Mrs. Maxine Hill, Seat 12.

3 All right, now, you 12 jurors will be the regular
4 trial jurors. We've also picked two alternate jurors because
5 of the protracted nature of the trial and just in case some
6 regular juror has to be replaced. I will advise that the
7 alternate jurors will sit with the regular jury all through the
8 trial and hear all the evidence and they have to be prepared to
9 participate in the deliberation in case something happens to
10 one of the other jurors. Mr. Ronald Gribble, if you'll take a
11 seat on the end as Alternate Juror No. 1 and
12 Mrs. Lillian Honeycutt is Alternate Juror No. 2.

13 I want to express appreciation to the remainder of
14 the panel for the time you've spent here and your willingness
15 to serve in this case. We appreciate it very much.

16 You may be excused at this time with our thanks for
17 your service.

18 Ladies and gentlemen, you are going to serve as a
19 trial jury, and this includes the alternates too. The things I
20 say here will include the alternates also. We are not going to
21 keep you much longer, but I do need to give you a few special
22 instructions at this time.

23 You've all been advised now in the questioning that
24 you went through that the jury will be sequestered once you are
25 sworn. For that reason we are not going to swear you tonight,

1 so you can go home this evening. If we swore you, you couldn't
2 go home, so, we'll -- the first thing we do in the morning when
3 we come back will be to swear you as trial and alternate jurors
4 so you will be permitted to go home tonight and what you'll
5 have to do is, of course, pack a suitcase and bring your
6 things with you that you will need for the stay that I've
7 indicated you'll have in the motel.

8 We will have transportation to haul your things
9 to the motel, I guess that's been arranged.

10 So, you can bring -- frankly, bring any reading
11 material you'd want, books, you know, magazines, whatever you
12 need to keep yourself busy while you are in the motel. There's
13 no restriction on things like that. You will be under an oath at
14 all times not to let anybody communicate with you about the case,
15 not to discuss the case among yourselves or with any other
16 person and that will be the primary instruction. If you run out
17 of clothes and need additional clothes you will be able to have
18 the Bailiffs call your home or, perhaps, have additional
19 clothing sent down; things like that that you will need,
20 personal things that you'll need for your stay in the motel.
21 But, come as well prepared as you can in the morning.

22 Any of you have any questions that you'd like to
23 ask about that?

24 MRS. KIENHOLTZ: I have a little tape recorder, it's
25 music, and letters from my daughter in Arizona. Would it be

1 acceptable -- I know we can't have a radio but I'd like noise.
2 Would it be acceptable to bring my --

3 THE COURT: If it's not a radio.

4 MRS. KIENHOLTZ: No, it isn't. It's a little tape
5 recorder that has the tapes.

6 THE COURT: No, there would not be any problem with that.

7 MRS. KIENHOLTZ: Okay.

8 THE COURT: I'm sure you've all been very diligent in
9 abiding by the admonition all during this selection process.
10 It's, of course, now that you've actually been picked as the
11 trial jury and the alternate jurors, it's going to be doubly
12 important tonight while you are free to go home and listen to
13 the radio and TV that you will abide by the admonition. All I
14 can tell you, stress this, if it developed that this
15 admonition was violated, or came to light, it would simply mean
16 we'd have to do this whole thing over again.

17 So, you can see that it is very important that
18 you abide by that admonition in all respects. During all
19 recesses you will not be permitted to discuss the case among
20 yourselves until the case would be finally submitted to you.
21 The case will not be fully submitted until you've heard all of
22 the evidence, you received the instructions of the Court on the
23 law, heard the closing arguments of both attorneys and retired
24 to deliberate on your verdict, and that's the first time you are
25 permitted to discuss the case among yourselves.

1 Likewise, you shouldn't let anyone approach you and
2 discuss the case with you and you shouldn't discuss the case
3 with anyone else. As I've told you before, if anyone tries to
4 discuss the case with you, you should report it immediately to
5 the Bailiffs and if you know their names you should report the
6 names of the person that tries to discuss the case with you.

7 We're going to do all we can to make it as bearable
8 as we can for you while you are sequestered. We will try to
9 make some arrangements to maybe have a common viewing area for
10 TV or something so you can at least watch movies and things and
11 ball games without watching news broadcasts. I don't know
12 exactly how we'll arrange that but we'll try to accommodate
13 you as well as we can. But, it will be important that you
14 abide by this admonition and follow the instructions of the
15 Bailiff and cooperate with us in all respects during this trial
16 because, as I say, if something happens that you don't, why,
17 we'll just have to declare a mistrial and do it all over again.
18 I'm sure none of you want that to happen.

19 So, if none of you have any other questions we will
20 excuse you for the night and we are going to be in recess until
21 10:00. We've gone late enough that we couldn't start until
22 10:00 tomorrow morning and if you will report over in the main
23 Courthouse up on the third floor when you come tomorrow.

24 MRS. KIENHOLTZ: I have a problem. I do not drive and I
25 don't know of anybody in my locality to hitch a ride with in the

1 morning. My husband --

2 THE COURT: Mr. Falsetto, can you arrange that, some way
3 to get her transportation?

4 MR. FALSETTO: Yes.

5 THE COURT: All right, we'll be in recess, then. Thank
6 you.

7 (Recess taken and remainder of the jury panel
8 in the main Courthouse excused.)

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